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ABSTRACT

This handbok has been designed to identify critical issues facing state legislators and governmental bodies with alternatives for developing or administering state collective bargaining legislation in relation to postsecondary education. Following introductory material and historical development, emphasis is placed on general issues in federal and state legislation, federal versus state laws, existing state laws, academic government, public policy issues, component parts of enabling legislation, and approaches to further legislative study including model legislation and study commissions. Appendices include a glossary of public employment terminology; state-by-state classification of public employment acts as of January 1, 1974; current state-by-state legislative status of public employee omnibus, and specific negotiations legislation; and other source materials for further analysis. (MJM)

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COLLECTIVE BARGAINING IN POSTSECONDARY EDUCATIONAL INSTITUTIONS

Applications and Alternatives in the Formulation of Enabling Legislation

A Resource Handbook

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Education Commission of the States
1860 Lincoln Street
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March 1974

Report Number 45

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Report No. 45
Education Commission of the States
Denver, Colorado 80203
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March 1974

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TABLE OF CONTENTS

Page

Foreword iii

Ad Hoc Writing Committee v

I. INTRODUCTION, HISTORICAL DEVELOPMENT, IMPACT AND ASSUMPTIONS

Introduction 1
Historical Development 2
Collective Bargaining: The Impact 3
Collective Bargaining: The Common Assumptions 5

II. GENERAL ISSUES

Federal Legislation 7
State Legislation 10

III. SPECIAL LABOR LEGISLATION FOR POSTSECONDARY EDUCATION: PATTERNS TO DATE

Federal Versus State Laws 13
Existing State Laws 13

IV. SPECIAL ISSUES

Academic Government: Issues and Impact 17
Public Policy Issues 19

V. ENABLING LEGISLATION: COMPONENT PARTS

Types and Scope of Labor Legislation 22
Purpose and Coverage 22
Employer 24
Employes 24
Administration of Statute 25
Administrative Organization for Bargaining 26
Recognition 28
Unit Determination 33
Scope of Negotiations: What is Negotiable? 37
Bargaining Procedures 39
Interface With Other Laws 40

Impasse Resolution 41
Prohibited Practices 50
Contract Administration and Enforcement 54

VI. APPROACHES TO FURTHER LEGISLATIVE STUDY

Model Legislation 57
Study Commissions 58

VII. POSTSCRIPT 59

APPENDIX I
A Glossary of Public Employment Terminology 61

APPENDIX II
State-by-State Classification of Public Employment Acts as of Jan. 1, 1974; Current State-by-State Legislative Status of Public Employe Omnibus, and Specific Negotiations Legislation 67

APPENDIX III
Other Source Materials for Further Analysis 91

FOREWORD

Concern by the Education Commission of the States with the impact of collective bargaining in education upon the states dates back at least to the second annual meeting of the commission, in Denver in 1968. The theme of the meeting was "Teacher Militancy: Strikes, Sanctions and State Government." Participants dealt with the issues of collective bargaining in the public schools. Faculty collective bargaining in postsecondary education was at best a minor phenomenon and received little attention at the meeting. In fact, in 1968, 10,000 or fewer faculty members, mostly in community colleges, were at some level of collective bargaining status. Since then the situation has changed radically. In 1973, more than 80,000 faculty members were involved in collective bargaining. This rapid development poses new and important problems both at institutional and state levels.

Anticipating acceleration of faculty collective bargaining and its implications for the states, the Education Commission of the States published for the 1972 annual meeting in Los Angeles a report entitled *Faculty Collective Bargaining in Postsecondary Education: The Impact on the Campus and the State.* This report was prepared by an ad hoc committee consisting of Neil Bucklew, Thomas Emmet, Ray Howe, Harry Marmion and Donald Walters. The report recommended the establishment of a national clearinghouse on faculty collective bargaining, development of training programs and continuing assistance to legislators and governmental leaders in identifying issues that need to be faced on state levels in connection with faculty collective bargaining. Since the report was issued such a clearinghouse—the Academic Collective Bargaining Information Service—has been established with the help of the Carnegie Corporation of New York under the auspices of the Association of American Colleges, the American Association of State Colleges and Universities and the National Association of State Universities and Land-Grant Colleges. Seminars and training sessions have been conducted by the National Association of College and University Business Officers.

This handbook has been designed to help meet the third need, that is, identification of critical issues facing state legislators and governmental bodies with alternatives for developing or administering state collective bargaining legislation in relation to postsecondary education. Currently, 12 states have collective bargaining legislation with special reference to postsecondary educational institutions. Eight states have omnibus public employe bills that by implication or interpretation include employes at postsecondary educational institutions. An additional seven states without legislation have "de facto" postsecondary education contracts. Nineteen states have considered collective bargaining legislation within the last three years, although legislation has not yet been passed. In only four states is no legislation in this area currently pending. The issues are, thus, very much alive.

Rather than attempt to develop model legislation, it was the decision of the commission and the ad hoc committee to develop a handbook of issues involved in such legislation with the alternative approaches and their implications. It is our hope that this will be of major value to legislators faced with developing new legislation or modifying existing legislation or deciding whether or not there should be such legislation. In addition to legislators, however, the handbook should be of value to state postsecondary education agencies, administrators, faculty and the various groups concerned with the problems of collective bargaining and its alternatives in postsecondary education.

On behalf of the Education Commission of the States, we would like to express our particular appreciation to the members of the ad hoc committee both for planning the handbook and actually writing the various sections of it. Special appreciation is extended to Thomas Emmet, Ray Howe, Nancy Berve, John Chaffee and Jeanine Bays for editing the manuscript. Thomas Emmet, in cooperation with Doris Ross of the Research and Information Services Department of the commission, has prepared the valuable material in the appendices. We are indebted to the Academic Collective Bargaining Information Service for making Dennis Hull Blumer's services available to the ad hoc committee and to Donald Leonard of Nelson, Harding, Marchetti, Leonard and Tate of Lincoln, Neb., for providing the services of William A. Harding. Both added immeasurably to the discussions and to the text. Finally, we would like to express our appreciation to the following readers who have reviewed and commented on the final document:

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I. INTRODUCTION, HISTORICAL DEVELOPMENT, IMPACT AND ASSUMPTIONS

Introduction

Background

In May 1972, a paper titled "Faculty Collective Bargaining in Postsecondary Institutions: The Impact on the Campus and on the State," which was prepared by the Higher Education Services staff and an ad hoc advisory committee, was presented to the Education Commission of the States' Steering Committee at the annual meeting. The paper contained recommendations for an ECS project aimed at assisting and informing state legislative and governmental leaders, as well as institutions and their administrators, through a national monitoring clearinghouse, research seminars and training programs in faculty collective bargaining. Initiation of the project was approved by the Steering Committee with a recommendation that foundation funding be sought to support the major portions of the project.

Carnegie Proposal

In June 1972, it was brought to the attention of the staff that a similar proposal had been submitted to the Carnegie Corporation by three Washington-based higher education organizations. Consequently, it was decided to postpone implementation of the ECS project until the outcome of the Carnegie proposal was known. In the interim, the director of Higher Education Services conducted informal discussions with representatives of the three organizations, and an agreement was reached that, if the grant was approved, the ECS staff would cooperate and assist in the project. In April 1973, the Carnegie Corporation announced a grant of $277,935 to the Association of American Colleges (AAC), in cooperation with the American Association of State Colleges and Universities and the National Association of State Universities and Land-Grant Colleges, for the establishment of a collective bargaining information service.

Need for a Handbook

Following announcement of the Carnegie grant, several members of the ECS ad hoc committee met with the Higher Education Services staff at the ECS offices in Denver to review the AAC joint project and explore areas of concern in faculty collective bargaining which would not be emphasized to any great extent in the AAC project. As developed, the AAC project is focused primarily on institutional impact and interest. What is badly needed in addition is basic information and assistance for leaders at the state level, particularly in those states which at the present time do not have collective bargaining laws or, where they do, are either considering modifications in the law or are in the process of beginning the negotiating procedure.

The committee pointed out that, since it is at the state level that decisions are made for institutional funding, including faculty salaries, it is imperative that the bargaining process be understood. The ECS staff was in agreement with the committee's recommendation that ECS develop a handbook (or "manual" or "cookbook") for distribution primarily to governors, state legislators and statewide coordinating or governing boards.

Focus of Handbook

In this new "handbook," an expanded advisory committee has undertaken a more indepth analysis of the specific issues that arise in postsecondary education collective negotiations. This has been done in the context of the statutory framework of public employe collective bargaining, so that the same audience which found the first report of value might use this document as a resource book for issues, alternatives, data sources and possible implications that need to be recognized and faced when dealing with this complex area of

prospective or modified legislation in the postsecondary public employment sector.

As a preface to the specific issues of the advisory committee's coverage of this topic, the following sections from the 1972 report, with some factual updating over the 18 months since the report was published, are restated.[1]

Historical Developments

"Collage of Inconsistencies"

Among the multitude of problems that beset higher education and the myriad challenges that confront it, no single item seems to portend more controversy than that likely to be generated by the emergence of collective bargaining. One observer-participant has characterized the phenomenon to date as ". . . a fascinating collage of inconsistencies."

Origins

Collective bargaining in any level of education is of relatively recent development. Its active origins are usually attributed to the efforts, only slightly more than a decade ago, of a minority of New York City public school teachers, efforts which did achieve recognition and, in short order, a contract. From this base collective bargaining radiated to other urban centers and from them into the hinterlands beyond. Today no part of the country has escaped some semblance of its impact in elementary and secondary schools.

Public Employes Bargaining Legislation

When, in 1965, the second state in the nation enacted legislation which granted public employees in general and teaching personnel in particular the option of a formal bargaining relationship and when in the same year several other states followed suit, the breakthrough occurred. *Today, at least 30 states* have passed such enabling legislation in some form and several others are deliberating action on an imminent basis. The breakthrough did occur primarily, but certainly not exclusively, in the elementary and secondary levels within the field of education and in certain classifications of other public employees. Some postsecondary instiutions were affected. *Postsecondary educational institution includes, but is not limited to, an academic, vocational, technical, home study, business, professional, or other school, college, or university, or other organization or person, offering educational credentials, or offering instruction or educational services (primarily to persons who have completed or terminated their secondary education or who are beyond the age of compulsory high school attendance) for attainment of educational, professional, or vocational objectives.*[2]

Definition of "Postsecondary"

Faculty Bargaining History: In 1968;

In 1968 a reputable analyst estimated that perhaps 10,000 faculty members in higher education were under the aegis of some level of collective bargaining status, the overwhelming majority of which were faculty in community or junior colleges or vocational institutes. *In 1973, published figures showed that more than 80,000 faculty members had achieved or been granted this status.* This growing number includes faculties not only of two-year institutions but of four-year colleges and universities and of several entire state systems. It included some Catholic colleges *and other church-related institutions* especially in the urban areas.

And Now

Institutions Involved

While there is conflicting data regarding a precise list of colleges and universities under collective bargaining, it appears that *it now exists in some*

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[1] The following three sections are quoted from *Faculty Collective Bargaining in Postsecondary Institutions: The Impact on the Campus and on the State* (Education Commission of the States, Report No. 28, Denver, Colorado, May 1972). pp. 1-5; 8-10. The updated sections are in italics.

[2] *Report of the Task Force on Model State Legislation for Approval of Postsecondary Educational Institutions and Authorization to Grant Degrees* (Education Commission of the States, Report No. 39, June 1973). pp. 2-3.

form or another on over 315 campuses. Approximately 86 per cent of these are public institutions at this stage and slightly over one-third of that total are four-year colleges or universities.

Current Regional Pattern

There is as yet primarily a regional pattern in collective bargaining in higher education *but "islands" of initiation across the nation allow for at least the inference that coast-to-coast and border-to-border impact may be in the offing. Some 21 states are currently involved to some degree.* The State University of New York (SUNY) and the City University of New York (CUNY) are large and complex institutions, yet they are included. In CUNY the two bargaining units for faculty which were originally separately recognized and highly competitive have recently found a common ground and presumably a common bond and are now acting in concert.

States Involved Extensively

The entire state college systems of New Jersey, *Hawaii, Vermont, Nebraska* and Pennsylvania have similarly entered the fold. In Rhode Island the three public institutions of higher education in the state, which share a common governing board, have all entered into collective bargaining, each with a differing bargaining agent representing the faculty. Most of the eleven state colleges in Massachusetts are already certified and are sitting at the bargaining table. In Michigan, *five state universities*, each acting independently, have elected to go the collective bargaining route, and more are evidencing interest.

Areas Showing Tendencies

Areas not yet affected are beginning to show tendencies which incline toward consideration and/or acceptance of collective bargaining on the part of faculty. While the most prestigious private institutions have not as yet been penetrated, *. . . some of the larger state universities are beginning to feel pressure.* In some major universities activity is most evident in the professional schools. At a number of graduate schools across the country teaching assistants are hard at the process of seeking recognition. In some cases they have already achieved it.

Collective Bargaining: The Impact

Few, if any, categories of postsecondary institutions have escaped the impact entirely. New petitions for recognition and new elections are being reported almost weekly. Even those campuses which with valid reason may regard themselves as reasonably safe have some cause for concern and interest. There is the possibility, indeed the probability, of a "ripple effect" in two respects. The first, or "domino" effect, suggests that when either comparable institutions or proximate institutions make a dramatic move towards collective bargaining others may follow suit. The second aspect is the effect that agreements reached on campuses which implement collective bargaining may have on salaries or conditions at similar or adjacent institutions which do not. This latter influence could take either one of two possible forms.

The Effects

Influences on Salaries and Conditions

On the one hand, bargained agreements may tend to set the pace in the areas of salary and working conditions which must be met by the nonbargaining institutions if they desire to be comparable or competitive. On the other hand, nonbargaining institutions may generate efforts to demonstrate that more can be attained by faculty without the necessity of collective bargaining, and in order to accomplish this they will grant greater benefits without those benefits having been advanced formally by anyone.

Forms of Influence

Taken altogether there is evidence of a clear intrusion of collective bargaining in the arena of postsecondary education more than sufficient to warrant serious attention and study.

Possible Tidal Wave

No one can at this moment assert with any confidence that the pattern in higher education will duplicate what some view as the tidal wave which has overwhelmed elementary and secondary education, even though the possibility of such a prospect must be candidly considered. The circumstances are not the same, the practitioners are not the same and the traditions are not the same. Yet it should be recalled that in 1965 those who deplored the possibility of collective bargaining in elementary and secondary education argued that it was not appropriate to that situation and they found this inadequate to prevent or even impede the arrival of the phenomenon.

Challenge to University Traditions

The long established traditions of the university are clearly being subjected to question and challenge by some faculties as well as by other forces outside the university. These traditions may require critical reexamination by all elements which compose, contribute to, or in any way affect the collegiate community. Many would maintain that the nature of the mission of an institution of higher learning demands, if it is to be properly fulfilled, some natural immunity from social pressures and process which may be thoroughly appropriate to other bulwarks of society but which are not appropriate to higher education. It may be time to study this assertion to assure, at the very least, that either its restatement or its modification is soundly rooted in contemporary terms and in rational approach. It can hardly, today, be simply taken for granted.

Is Collective Bargaining Compatible With Higher Education

It might be the case, for example, that a careful scrutiny would reveal an urgent requirement that even if collective bargaining were found to be compatible to some degree with the purposes and perquisites of higher education, some clear modifications in its application might be in order. What might derive is a recognition that, while collective bargaining of itself might well apply to higher education, certain facets of the implementation of the process would call for changes in the procedures of bargaining that are imperative, if the integrity of the institutions is to be preserved.

Possibilities to be Faced

There is a growing concern that unless this can be accomplished the very roots of higher education may be brutally torn up. There must be an accompanying concern as to whether, considering the state-of-the-art, we are prepared to approach such an effort.

It could be, of course, that the traditional approach might be reaffirmed. Such possibilities, or others that may pertain, can simply no longer be blithely ignored or casually brushed aside as matters which will somehow take care of themselves.

Growth of Collective Bargaining in Education

It is not generally recognized, and where recognized the implications are certainly not analyzed, that collective bargaining in the public educational sector is proceeding at an extremely rapid pace, both absolutely and relatively.

Compared to General Labor Union Growth

When it is considered that in the private sector *in the 39 years* that have elapsed since the passage of the Wagner Act, *over one-third* of the labor force has become unionized, while in all levels of public education—elementary, secondary and postsecondary—almost but not quite that same fraction has taken a union-line stance in one decade, something of significance becomes obvious. Almost everyone considers unions to be a vital force, for good or evil, in the private economy. Few, indeed, yet consider unions to be a vital force in the public sector. It may be time to reappraise the development as such, both in terms of its present state and of its potentiality.

Limited Reaction Time

The rapidity of the pace strongly suggests that the time for reaction to the phenomenon is limited. *The acceleration of the pace in recent years* impels the realization that the limited reaction time is at least commensurately dimin-

is'ed. This acceleration of pace is, perhaps, most noticeable in higher education. Since the initiative to invoke collective bargaining lies with faculty, it is questionable whether it lies within the capacity of administration *either to inhibit or affect the pace* . . . .

Collective Bargaining: The Common Assumptions

Academics have proceeded on many assumptions which require reexamination. Among these assumptions are the following:

Common Academic Assumptions

1. That the adversary relationship which seems to accompany collective bargaining is inimical to collegiality. — *Adversary vs. Collegiality*
2. That collective bargaining is a conflict-creating mechanism which will serve only to polarize or politicize a campus. — *Polarization*
3. That a collective negotiation of wages and related matters is lacking in the dignity or virtue of professionalism when contrasted with individual negotiation of such items which has been so widely and so long practiced. — *Reduced Professionalism*
4. That a compromise resolution of difference, which seems to be the outcome of the bargaining relationship, is inferior to a consensus resolution of difference, which is believed to be the derivative of the traditional relationship. — *Compromise vs. Consensus*
5. That collective bargaining will increase costs, reorder educational priorities, or impede, if not prevent, institutional efficiency. — *Reduced Efficiency*
6. That the "union," qua union, will control educational policy making by corrupting or destroying established decision-making patterns. — *vs. Established Decision Making Patterns*
7. That collective bargaining is incompatible with excellence. — *vs. Excellence*
8. That by its internal effect and its external image, collective bargaining will serve to erode institutional autonomy. — *vs. Autonomy*
9. That collective bargaining will bring with it some wave of "rampant radicalism." — *Encouragement of Radicalism*
10. That contractual commitments engendered by collective bargaining will serve to "freeze," for the fixed period of the contract, the institution's capacity to adapt and grow, either financially or otherwise. — *Restriction of Growth*

These are but examples. As many differing assumptions or more could perhaps be readily summarized. Some of these may be assumptions which are substantially warranted, while others may be completely mistaken, and all are subject to challenge.

There is, however, one operative assumption not widely held by academics that is deserving of thought. In the majority of states where legislatures have taken affirmative action and in the federal government where three successive administrations have maintained or sustained President Kennedy's 1962 executive order granting collective bargaining to federal employees, the assumption must be made that, rightly or wrongly, the provision of the opportunity to bargain collectively for faculty is regarded by legislative and/or executive branches of government as in the best public interest, all factors considered, and, in similar fashion where it is clearly applicable to higher education, in the best interests of such institutions and systems, again all factors considered.

State & Federal Collective Bargaining

Considered as in the Public Interest

Such public officials can, of course, be in error but they have been sustained in a number of instances by rulings of appropriate governmental agencies and by some courts of both original and appellate jurisdiction. This

Reinforcement by Courts

consideration must make us all pause since it is, many would assert, at odds with some of the basic tenets on which our educational institutions are based. These tenets are certainly worthy of reexamination. No endeavor dedicated to the pursuit of truth by the rigorous application of reason can, with consistency, resist the pursuit of truth regarding itself by the same process. Emotional and highly personalized commitments inevitably arise in any controversy, but they must not become paramount.

Alternatives Might Exist

No declaration is being advanced that collective bargaining is the way towards anything, rather that it is a way. Alternatives to it must be assumed to exist and these deserve illumination and consideration in conjunction with it. Advocates assert that advantages accrue from collective bargaining. These should be weighed, accompanied by a similar weighing of disadvantages that may be discerned.

Flexibility and Adaptation

The history of collective bargaining in this country and its utility and application to both unskilled and highly skilled workers, to performers in the creative arts as well as to salaried professionals, to both private and public fields of enterprise strongly suggests that there must be some degree of flexibility in the process and at least a measurable capacity for adaptation.

Need for Skilled Practitioners

There is a dearth of available skilled or experienced practitioners in collective bargaining in postsecondary education, and, it must follow, a great extent of ignorance concerning that with which we may be confronted. It is incumbent upon us to harness and channel such resources as may be available so that they can be of the greatest benefit to faculties, administrators, state agencies, and legislators in making decisions which they may be called upon to make.

It is in this context that the following continuing analysis has been developed by the advisory committee.

II. GENERAL ISSUES

Federal Legislation

Congressional Interest

The Congress has been turning its attention toward public employe bargaining with increased frequency during the 1970s. This attention has most often taken the form of suggesting that national machinery be set up for public employe bargaining or that public employes be brought under the jurisdiction of the National Labor Relations Board. Bills have been introduced to this effect with increasing frequency ever since President Kennedy signed the 1962 executive order allowing federal employes the right to organize.

No less than 20 such bills were introduced in the first seven months of the 93rd Congress. Public postsecondary education has not been granted an exemption from coverage under these proposals, and as the proposals are intended to apply to all public employes, it is doubtful that such an exemption will be forthcoming. Obviously, if federal legislation is enacted in this form, all state legislation in the field will be preempted.[3]

The Federal Alternative

As the purpose of this document is to point out issues and suggest alternatives in the field of labor relations legislation for postsecondary education, support for federal legislation which would supersede any and all state legislation becomes an obvious (and perhaps ominous) alternative. Therefore, the following discussion will focus on some of the federal approaches that are now being suggested.[4]

Proposed Federal Legislation

1. *National Public Employee Relations Act*—On Jan. 3, 1973, Representative Green of Pennsylvania introduced HR 579 which would establish a National Public Employee Relations Act. On June 14, 1973, Representatives Clay and Perkins introduced HR 8677 which would establish a National Public Employment Relations Act. Both bills are patterned along the lines of the National Labor Relations Act and serve as good examples of the type of legislation Congress has been considering in this area in recent years.

Coverage

a. *Coverage*—Both HR 579 and HR 8677 extend coverage to all employes except elected or appointed policy-making officials of any state or political subdivision in the country specifically including any "school board" or "board of regents." HR 579 incorporates the National Labor Relations Act's definition of "supervisor," as does HR 8677. However, HR 8677 also defines a "professional" employe for the purposes of bargaining unit placement.

Federal Commission

b. *Federal Machinery*—Both bills propose the establishment of a federal commission with five members to be appointed by the President. The structure suggested by both bills is similar to that of the National Labor Relations Board with a general counsel, regional offices, trial examiners and hearing officers. Both bills suggest a nonbinding fact-finding procedure utilizing the services of the Federal Mediation and Conciliation Service, and both bills allow for the resolution of collective bargaining disputes by arbitration.

Mediation and Arbitration

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[3] Section 16 of the *State Public Employee-Management "Collective Negotiations" Act*, drafted in 1970 by the Advisory Commission on Intergovernmental Relations, provides for a "local option" allowing municipal collective bargaining regulations to continue if they are substantially in accord with the state collective bargaining statute. To date, proposed federal legislation has not incorporated a similar approach as regards already enacted state legislation.

[4] *See* Sullivan, *Public Employee Labor Law* §§17 and 18 (1969) for an interesting description of public sector legislation in Canada and Australia which suggest even more alternatives.

Recognition

c. *Recognition*—HR 579 provides for a secret ballot election procedure very similar to that utilized by the National Labor Relations Board. This procedure requires the written support of at least 30 per cent of the bargaining unit for a secret ballot election and requires that the union receive support from a majority of the employes voting in that election. On the other hand, HR 8677 provides that public employers must recognize, as an exclusive collective bargaining agent, any union requesting such recognition and giving evidence that a majority of the employes in the bargaining unit wish to be represented by that union. Only in narrow and specifically enumerated instances may a secret ballot election be held. HR 8677 also provides that both supervisors and nonsupervisors may be included in the same bargaining unit in the field of education.

Unfair Labor Practices

d. *Unfair Labor Practices*—Both HR 579 and HR 8677 prohibit employers and unions from coercing employes, discriminating against employes or refusing to bargain in good faith. The commission established by both bills has the power to prosecute complaints alleging the existence of unfair labor practices, and the orders of the commission may be enforced by the federal courts.

Strikes

e. *Strikes*—HR 579 prohibits strikes during the 60-day period immediately following the issuance of the fact-finding decision referred to above. HR 8677 specifically authorizes public employe strikes unless such strike poses a clear and present danger to the public health or safety, or the union has failed to make a reasonable effort to utilize the impasse procedures provided for in the act, or unless such strike is contrary to the terms of a collective bargaining agreement.

Union Shop

f. *Union Security*—Both HR 579 and HR 8677 authorize "union shop" bargaining agreements, and HR 579 specifically requires an employer to "check off" (deduct) union dues upon receipt of a written authorization by each employe.

The issues listed above are indicative of the types of issues contained in legislation proposed to date. While other issues may be suggested in future federal legislation, it may be assumed that legislation proposed in the future will treat in some manner the issues listed above.

Proposed Extension of N.L.R.A.

2. *Extension of the National Labor Relations Act*—On July 31, 1973, Representative Thompson introduced HR 9730 which provides that employes of all states and political subdivisions shall become subject to the provisions of the National Labor Relations Act (N.L.R.A.). Representative Thompson introduced an identical bill last year (HR 12532), and a move of this type to extend the jurisdiction of the National Labor Relations Act to public employers has been suggested several times in recent years. Again, postsecondary education has not been suggested as an exemption to N.L.R.A. coverage; and it is doubtful that it will be considered for an exemption in light of two very basic reasons:

Postsecondary Education Coverage

a. First, as is the case with legislation that suggests a Public Employment Relations Board, bills which suggest an extension of the N.L.R.A. to public employers are intended to apply to all public employers; and it is extremely doubtful that postsecondary education will be able to obtain a specific exemption.

Current Jurisdiction of N.L.R.B.

b. Second, the National Labor Relations Board (N.L.R.B.) has accepted jurisdiction over private universities and colleges since the summer of 1970,[5]

[5] See Cornell University, 183 N.L.R.B. No. 41 (1970).

and has already developed a body of case law regarding bargaining unit placement, etc., as regards private colleges and universities that could also be applied to public colleges and universities. Of course, if public colleges and universities along with other public employers were placed under the jurisdiction of the National Labor Relations Act, the employes of those public employers would be allowed the same rights to strike as are currently allowed to employes of private employers under the act's jurisdiction.

N.L.R.B. Reliance on industrial Sector

As is obvious to many, the National Labor Relations Board is relying heavily upon theories, reasoning and decisions applicable to the industrial sector in issuing decisions involving private colleges and universities. Therefore, it may be assumed that public colleges and universities would not receive any different treatment should they be placed under the jurisdiction of the N.L.R.B. The largest body of labor relations law in this country has been developed under the National Labor Relations Act, and this body of law has been and will probably continue to be used as a basis for decision making in the field of public employer-employe labor relations.

N.L.R.B. Effect on Colleges

It may, therefore, be contended that public colleges and universities are already affected by the decisions of the National Labor Relations Board in an informal manner. The real impact of extending the National Labor Relations Act to include public colleges and universities along with other public employers would be to place those employers into the midst of an already developed body of law with specific "do's" and "don'ts" which have been tailored primarily to the industrial sector.

Adaptation to N.L.R.B. Practices

As a consequence, the postsecondary education community would have to adapt itself to the particular ways in which the National Labor Relations Board modifies and applies theories and concepts that have not previously been utilized in labor relations as they apply to postsecondary education. For the first time, postsecondary education would be faced with the vagaries of the "laboratory conditions standard" utilized by the N.L.R.B. with regard to secret ballot elections, along with the detailed and specific body of procedural law that accompanies both representation and unfair labor practice cases before the N.L.R.B., and many more areas of labor relations that have not been applied to or explored by public postsecondary education.

State Consensus Approach to Federal Legislation

In addition to a National Public Employee Labor Relations Act or an extension of the National Labor Relations Act, a third possibility exists on the federal level. The third approach flows out of action taken at the state level. As is obvious from the number of bills introduced but not passed, the Congress is approaching labor legislation for state and local governmental employes very cautiously. However, should numerous states reach a consensus on legislative treatment of the issues involved in labor relations legislation for public employes, the Congress might very well follow such a lead and incorporate identical provisions into federal legislation.

State vs. Federal Legislation

On the other hand, if more states continue to pass public employe labor legislation, the Congress may lose interest altogether in passing legislation in the area. The remainder of this chapter addresses itself to numerous issues, and points out various alternatives, in developing state labor relations legislation as it applies to either public employes in general or postsecondary education in particular.

State Legislation

Alternative State Legislation

No Statute

1. *No Statute*—An obvious alternative to state labor relations legislation for public employes is simply not to have any legislation. Numerous states have followed this course of inaction and may continue to do so. One result flowing from the "no statute" concept is that public employe labor organizations may continue to direct their efforts toward passage of federal legislation as described above.

Right to Join vs. Recognition

Of course, public employes have the right to join labor organizations in the absence of state law. However, in the absence of specific statutory authority, public employers are generally prohibited from recognizing and bargaining with employe organizations.[6]

Bargaining Without Statutory Authority

Collective bargaining may still occur in the absence of specific statutory authority, but good faith bargaining is in no way guaranteed. The public employer always has the option of breaking off negotiations at any point claiming lack of statutory authority to proceed. Even if the public employer does bargain in good faith, the absence of such authority to do so may expose the public employer to a taxpayer lawsuit seeking to prohibit the public employer from either bargaining or implementing the provisions of a signed collective bargaining agreement. Thus, even though bargaining does occur in the absence of statutory authority, it may be assumed that without a state law collective bargaining in the public sector will be significantly hindered.

Employe Grievances Under "No Law"

The lack of power by law to recognize and bargain with employe organizations undoubtedly frustrates the efforts of employe organizations to attract members. However, the absence of statutory authority for public employers to bargain and the absence of a state administrative agency to regulate labor relations does not necessarily preclude the development of employe grievances or employer-employe conflict. Without a specific statute which sets forth a procedure to resolve these problems, the only course of action open to the employes is a court proceeding on either the federal or state level.

Union Activity: A Constitutional Right

Significantly, the federal courts recognize union activity to be a protected right under the First Amendment of the U.S. Constitution.[7] Thus, public employes discriminated against, coerced or otherwise intimidated by public employers, lacking a state statute providing a remedy, will most likely file an action in federal court alleging deprivation of a constitutional right.

Federal statutes specifically provide a cause of action for deprivation of

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[6] See *I.B.E.W. Local 507 v. City of Hastings*, 179 Neb. 455, 457-58, 138 N.W.2d 822, 824 (1965); *International Union of Operating Engineers v. Water Works Board*, 276 Ala. 462, 163 So. 2d 619, 621 (1964); *Dade County v. Amalgamated Association of Railway Employees*, (Fla.), 157 So. 2d 176, 181-182 (1963); *Miami Water Works Local No. 654 v. City of Miami*, 157 Fla. 445, 26 So.2d 194, 197 (1946); *Fellows v. LaTronica*, 151 Colo. 300, 377 P.2d 547, 550 (1962); *Mugford v. Mayor and City Council of Baltimore*, 185 Md. 266, 44 A.2d 745, 747 (1946); *Nutter v. City of Santa Monica*, 74 Cal. App.2d 292, 168 P.2d 741, 744-746 (1946); *City of Los Angeles v. Los Angeles Building and Trades Council*, 94 Cal. App.2d 36, 210 P.2d 305, 311 (1949); *City of Springfield v. Clouse*, 356 Mo. 1239, 206 S.W.2d 539, 545 (1947); *City of Alcoa v. International Brotherhood of Electrical Workers*, 203 Tenn. 12,308 S.W.2d 476, 479 (1957); *Weakley County Municipal Electric System v. Vick*, 43 Tenn. App. 524, 309 S.W.2d 792, 804 (1957); *International Longshoremen's Association v. Georgia Ports Authority*, 217 Ga. 712, 124 S.E.2d 733, 736 (1962), *cert. denied* 370 U.S. 922 (1962); *Porter v. Vinzant*, 49 Fla. 213, 38 So. 607, 608 (1905); *City of Daytona Beach v. Dygert*, 146 Fla. 352, 1 So.2d 170, 173 (1941); *State v. Keller*, 129 Fla. 276, 176 So. 176, 180 (1937); *Burnett v. Maloney*, 97 Tenn. 297, 37 S.W. 689, 693 (1896); *Attorney General Reports*, Alabama, April-June, 1941, p. 55; October-December, 1946, p. 19; *Id.* p. 43; July-September, 1946, p. 36; April-June, 1957, p. 35; July-September, 1958, p. 38.

[7] *American Federation of State, County and Municipal Employees, AFL-CIO v. Woodward*, 406 F2d 137, 139 (8th Cir. 1969).

constitutional rights.[8] However, these statutes provide a cause of action against the individuals violating the constitutional rights of the plaintiff. Therefore, the action cannot be filed against the employer as a governmental entity and instead must be filed against the individuals the plaintiff specifies as having violated his constitutional rights. On the other hand, a state statute providing for an industrial commission and some method of resolving employer-employe disputes generally allows the action to proceed against the employer as an entity rather than against individual members of the management team.

Cause for Action Against Individuals vs. Employer as an Entity

In addition to encouraging public employes and public employe organizations to use federal remedies, the absence of comprehensive state legislation may lead to at least two other alternatives. First, various state governmental subdivisions may be requested to pass regulations or ordinances authorizing collective bargaining at the municipal level. If there is no state law setting forth the requirements for such municipal ordinances, it may be assumed that any municipal ordinances passed will not be uniform and may provide for substantially different methods of dealing with collective bargaining.

Municipal Authorization

Second, without comprehensive state legislation the passage may result of piecemeal state legislation which deals only with problems as they develop. This approach to state legislation has been characterized as "squeaky wheel" and "crisis" legislation,[9] and it may be assumed that piecemeal state legislation which is enacted either in response to the political power of the proponents or to solve an immediate problem confronting the public welfare, will neither provide adequate safeguards for the rights of all parties to the collective bargaining process nor provide legislative direction on all critical issues relating to the collective bargaining process. However, these processes may develop as a necessary adjunct to the alternative of not having comprehensive state legislation.

"Crisis" Legislation

2. *Types of State Statutes*—Most state statutes dealing with public employer-employe relations have been framed in the negative. For example, most states prohibit public employes from striking and some states have even prohibited public employes from joining labor organizations.[10] Of the states that have passed legislation authorizing public employers to recognize and bargain with labor organizations, very few have dealt specifically with postsecondary education.

Negative State Legislation

Following the lead of states like New York and Michigan, several states have established industrial commissions to deal with the issues surrounding recognition of labor organizations, resolution of bargaining demands and prosecution of unfair labor practices. Of course, impasse resolutions in the absence of a right to strike and the enumeration of unfair labor practices in the public sector are thorny issues, and many states passing legislation in the public sector have attempted to sidestep those issues by simply authorizing the parties to recognize and deal with each other. Legislation of this type has basically fallen into two separate categories:

Industrial Commissions

"Meet and Deal With" Legislation:

a. *Meet and Confer*—Legislation of this type does not authorize the public employer to engage actively in collective bargaining or to sign collective bargaining agreements. However, the public employer is authorized to "meet

a. Meet and Confer (No Contract)

[8] *See* 42 U.S.C. §§1983 *et seq.*

[9] *See R. A. Smith, Legal Principles of Public Sector Bargaining*, in *Faculty Power*, T. Tice (Ed.) Ann Arbor: Institute for Continuing Legal Education, 1972: at 9-22.

[10] See Sullivan, Public Employee Labor Law §8.3 (1969).

and confer" with the employe organization in an effort to resolve differences or disputes concerning wages, hours or working conditions along with other terms and conditions of employment. As used in this paper, the term "meet and confer" will apply to all statutes which do not provide a procedure to mandate the recognition of a collective bargaining agent or formal collective bargaining.

b. Recognition and Bargaining

b. *Recognition and Bargaining*—Legislation of this type grants full and complete authority to public employers not only to recognize but also to bargain with labor organizations and, if agreement is reached, to sign a collective bargaining contract incorporating the terms of the agreement. The term "recognition and bargaining," as used in this paper, will refer to state statutes that provide a procedure which may mandate the recognition of a collective bargaining agent and provide for formal collective bargaining.

As Chart B in Appendix IIA indicates, states having enacted specific labor legislation in the public sector are fairly evenly divided between these two concepts. As is also indicated by Chart B, most of the state legislation in the public sector is omnibus legislation dealing with all public employes in the state involved. Chart C in Appendix IIA indicates that a significant number of states have passed separate legislation for elementary-secondary education only. As is obvious from Chart A, higher education has not received a great deal of individual legislative attention in the passage of state labor laws.

Omnibus Legislation

Mixed Legislation

A third possibility has been explored by the state of Pennsylvania which provides for formal recognition and bargaining in numerous areas, but provides for only a "meet and confer" procedure as regards other areas in which there may be collective bargaining requests. This third alternative recognizes some obvious historical facts relating to public sector labor relations. First, many terms and conditions of employment that would otherwise be subject to bargaining are incorporated into state statutes. The parties may obviously meet and confer about these areas, but any collective bargaining may not result in contracts in conflict, actual or potential, with state law. Second, even though management prerogatives may be bargained away freely in the private sector, some areas of management prerogative are granted to public employers by either the state constitution or state laws. These areas obviously do not readily lend themselves to collective bargaining, but harmonious labor relations may be preserved by allowing the parties to meet and confer about these areas.

III. SPECIAL LABOR LEGISLATION FOR POSTSECONDARY EDUCATION: PATTERNS TO DATE

Federal Versus State Laws

Separate State and Separate Federal Laws for Higher Education

The Carnegie Commission on Higher Education, in a 1973 report entitled *Governance of Higher Education: Six Priority Problems*, stated that with respect to labor matters, state laws regulating unionization and bargaining are "based on the special nature of the civil service," whereas federal labor laws are "based on industrial experience." The commission feels that "the sharp industrial delineation between management and labor does not fit higher education; nor does the hierarchical civil service relation fit the more collegial approach taken on a campus." On this basis the commission recommended: "A separate federal law and separate state laws should be enacted governing collective bargaining by faculty members in both private and public institutions and should be responsible to the special circumstances that surround their employment. If this is not possible, then separate provisions should be made in more general laws, or leeway should be provided for special administrative interpretations."

Appeal to Institutions

This approach had great appeal to postsecondary institutions and their leadership who have, in almost every instance of their involvement with legislative activity, appealed for special status due to the particular nature of higher educational governance, as the institutional leadership perceives it.

Unique Conditions in Academe

Two distinguished students of academic collective bargaining have in recent months reacted favorably to the Carnegie Commission position. Kenneth S. Tollett, professor of higher education at Howard University, in a paper prepared for the 56th Annual Meeting of the American Council on Education in Washington, D.C., (October 1973), in analyzing the current collective bargaining scene, stated that "currently the laws affecting collective bargaining by public employees are diverse and directed to civil servants rather than teaching professionals. Bargaining in private colleges and universities under N.L.R.B. jurisdiction receives more uniform regulation. The most important point, however, is that state and federal laws regulating collective bargaining in institutions of higher education should be made more sensitive to the peculiar problems, needs, and conditions of *academe*."

In a response to Professor Tollett in the same meeting, Father Dexter Hanley, S.J., a labor attorney and president of the University of Scranton, stated that "into the field of higher education, the N.L.R.B. introduces many of the concepts of industrial unionization. On the other hand, most of the applicable state laws have grown up out of the legitimization of collective bargaining for public employees. Higher education is really a different creature, and it may find it hard simultaneously to digest the variant principles designed for other institutions. I emphatically concur in the suggestion that legislation should be made sensitive to the peculiar conditions of *academe*."

Existing State Laws

State Legislation Dealing with Postsecondary

A logical starting point might be to see what state laws providing faculty collective bargaining in the public sector deal separately with postsecondary education. To date there is but one state, Washington, that has passed specific

General

legislation, and that legislation deals with the community colleges only. Eleven other states—Alaska, Hawaii, Kansas, Minnesota, Montana, New Hampshire, New York, Oregon, Pennsylvania, South Dakota and Vermont—mention postsecondary institutions by name in their omnibus or special school collective negotiations acts, but beyond reference to the right to form units and bargain collectively, essentially the laws are of a general nature, with

Hawaii

postsecondary education being given little or no special status. The Hawaii act is somewhat unique since it sets out, in detail and by statute, the two bargaining units for the University of Hawaii which include: (a) "Faculty of the University of Hawaii and the community college system, and (b) Personnel of the University of Hawaii and the community college system other than faculty." The Hawaii law may be a model for a single state system of higher education in a smaller state with one governing board such as Alaska, Nevada or Montana, for example, but it could be less manageable for states with multiple boards for postsecondary institutions.

Oregon

The Oregon law, passed in 1973, has a special section dealing with the determination of representation for postsecondary education professional personnel. The procedures for calling a representation election and for placement of organizations on the ballot are the same for postsecondary education as for other employers. However, the ballot is constructed in two separate sections. The first section would offer the option of acceptance or rejection of any representation, and the second would list the specific organizations that could be chosen in the event the choice of representation prevailed in the first section of the ballot. Before an organization could be chosen as the exclusive representative, it would have to obtain an acceptance from a majority of those employes voting on the question. This law applies to all public four- and two-year institutional professional and staff employes of the state.

Washington

The Washington act, known as the Community College District Professional Negotiations Act, was first passed in 1971 and rather extensively altered by seven procedural amendments in 1973. These amendments include a redefinition of an employe organization as ". . . any organization which includes as members the academic employees of a community college district and which has as one of its purposes the representation of the employees in their employment relations with the community college district." It also defines academic employe as: "Any teacher, counselor, librarian, or department head who is employed by any community college district with the exception of the chief administrative officer of and any administrator in each community college district."

The key new section of the Washington act deals with a definition of an administrator and his bargaining status: "Any person employed either full or part time by the community college district and who performs administrative functions as at least 50 per cent or more of his assignments, and has responsibilities to hire or dismiss or discipline other employees. Administrators shall not be members of the bargaining unit unless a majority of such administrators and a majority of the bargaining unit elect by secret ballot for such inclusion."

It also authorizes the director of the State Board for Community College Education to conduct, with the consent of both parties, fact-finding and mediating activities to help settle unresolved matters considered under this act. The original act used impasse committees that were mandatory. Under this act they are discretionary. The State Board for Community College Education is

authorized to make rules governing the handling of impasse. This is an unusual solution in which it appears a level of management just above the administration of a given campus controls the impasse process. The state board can, however, use the services of the State Department of Labor and Industries to conduct elections for certification.

Of further interest are provisions in the Washington law that employe relations agreements are *required to be in writing, acted upon in* a regular or special meeting of the trustees and made part of the board's official proceedings. The new law limits the length of contracts to three years and prohibits agreements from binding future legislative action. Although the legislature included a union shop provision, the governor vetoed this section of the act.

Examples of Specific Legislation

Persons interested further in the evolution of specific legislation for postsecondary education in recent years might wish to review the following examples of legislation which have passed, failed, been vetoed or remain in process, and which can be classified as specific or special legislation for postsecondary education:

Colorado	1973	House Bill 1472	Failed
Connecticut	1973	Senate Bill 485	Failed
Hawaii	1971	Public Act 171—as amended by Public Act 212, 1973	Passed
Illinois	1973	House Bill 448, Senate Bill 897, Omnibus Public Employees Bill	In active legislative consideration at present
Kansas	1970	House Bill 1647	Passed
Maine	1973	Legislative Document 1773-1809	In a study committee for 1974 legislative action
Maryland	1972	House Bill 1392—Community College Collective Negotiations Act	Failed
	1973	House Bill Bill 354—Same	Failed
Massachusetts	1972	House Bill 1514—to set compensation and hours of work in institutions of higher learning	Failed
Minnesota	1971	Senate Bill 4	Effective 1971
	1972	Comprehensive Omnibus Act	Passed
North Dakota	1973	House Bill 1297	Failed
Oklahoma	1972	Senate Bill 550	Failed
	1973	House Bill 1348	Carried over to 1974 legislative session
Oregon	1973	Oregon Revised Statutes 243.711 to 243.795	Passed

Washington	1971	House Bill 739—Community College Collective Negotiations Act—amended 1973 by Senate Bill 2153	Passed
	1971	Laws 1971, Chapter 19, Collective Negotiations Higher Education Authorization—for classified higher educational employees	Passed
Wisconsin	1973	Assembly Bills 825, 828—Higher Education Employment Relations Act for University of Wisconsin State System	Carried over to 1974 legislative session—under present study

Omnibus vs. Specific Legislation

So far at least 15 states have, for political or historical reasons, developed or debated specific proposals regarding postsecondary education legislation. However, only Maine, Maryland, Massachusetts, North Dakota, Oklahoma, Washington and Wisconsin have considered special postsecondary level bills *per se*. The other legislation deals with other educational (e.g. elementary-secondary) or omnibus public employe organizations in which postsecondary education is given special mention in the area of recognition or employer and employe rights to bargain.

This review of legislation would indicate that, contrary to the Carnegie Commission's recommendations, state legislatures have not been inclined as yet to consider specific postsecondary education legislation except in Washington, Maryland, Kansas and Wisconsin. Other states have included postsecondary institutions but simply as part of an omnibus law with relatively few provisions. It would appear also that in some eight states—Connecticut, Kansas, Maine, Maryland, Missouri, North Dakota, Oklahoma and Wisconsin—the legislatures have recently been, or are, in the process of trying to extend rights of collective negotiations already granted to either public school professional personnel or public state employes in other classifications to postsecondary education professionals.

Importance of Definitions and Administrative Bargaining Units

A review of the current scene shows no emerging pattern, but the state of Washington experience with specific legislation would indicate that careful attention to definitions and administrative bargaining units is necessary. Attention might well be given to the definition of a supervisor or administrator; to the status of students as public employes; to the identification of the state agency which handles public employes' problems in terms of certification, elections, unit determination and impasse resolution procedures; and to the determination of which state agency, executive or legislative, may in practical reality be the ultimate employer. These are all areas of concern which will be raised in more detail in later sections of this report and are all elements that require careful legislative attention in the development of adequate public employe legislation which would encompass postsecondary education in any effective way.

Specific Provisions in Omnibus Bills

Rather than the Carnegie special legislation approach, the option is clearly available for development of specific provisions in an omnibus bill which would render to postsecondary education the careful consideration of the problem areas raised above demand, and at the same time give the state and the public a single, comprehensive omnibus public employment bill. It would appear that only a limited number of the provisions of any such omnibus bill might need to reflect specific postsecondary concerns and unique features.

IV. SPECIAL ISSUES

Academic Government: Issues and Impact

Shared Authority

Perhaps the most unique administrative feature of higher education in the United States is the aspiration of administrators and faculty as to the proper principles of academic government. In the main, universities and colleges either are governed by or are aiming ultimately for a system of governance commonly known as shared authority. The essence of the principle of shared authority is a recognition of the inescapable interdependence and interaction between the governing board, the administration and the faculty. These three components—faculty, administration and board—have the joint authority and responsibility for governing the institution, and there needs to be adequate communication among these three groups and full opportunity for appropriate planning and effort.

Legal or Corporate Entities vs. Practice

As a corporate and/or legal entity a college or university derives its authority from its charter or governing board. Some states, such as California and Michigan, have even granted their universities constitutional autonomy. In practice, however, many faculty and other professional employes have come to believe that the academic enterprise is different from other organizations and must be governed with a clear understanding of the controlling weight of professional judgments which they alone are capable of making.

The thrust of this view of shared authority is reflected in the following comments by Bertram Davis in an article, "Unions and Higher Education: Another View":[11]

> "In strictly legal terms, all institutional authority may be in the hands of the board; but it has been commonly assumed that the board delegates authority to the President, and the President in turn may delegate certain parts of it to the faculty. The (AAUP) Statement rejects that view of academic life. The faculty's authority, it is clear, rests not upon presidential understanding or largesse, but upon the faculty's right, as the institution's foremost professional body, to exercise the preeminent authority in all matters directly related to the institution's professional work. The President, in short, is not the faculty's master. He is as much the faculty's administrator as he is the board's, and the institution which accords him any other role has failed to appreciate the principles on which a successful academic community must be built."

Role of Faculty

Management Functions

The faculty aim is to participate in and have effective influence over matters which are considered management prerogatives in industry and other organizations. More specifically, traditional management functions such as staffing and planning require substantial faculty input and/or effective influence, it is hypothesized, if high-quality education is to be achieved. Faculty normally have effective control over the selection, promotion and reward of faculty members; standards for admission; graduation requirements; standards for the award of degrees; and the scope and quality of educational programs and courses. These matters are the very substance of the services expected from an academic institution.

[11] Bertram Davis, "Unions and Higher Education: Another View." *Educational Record* 49 (Spring 1968): pp. 139-144.

Student Involvement

A second unique feature of the shared authority system of governance in universities and colleges is the involvement of students. When an issue arises in academic governance which touches upon the interest of the students, they may very naturally demand a voice in the decision-making process. There is little precedent in most labor legislation for involvement of the "consumer" in the collective bargaining process.

Areas of Distortion by Industrial Collective Bargaining Models:

Kenneth Kahn has argued that the unique features of college and university governance will be distorted by the traditional industrial model of collective bargaining as it is constituted under the National Labor Relations Act.[12] The greatest impact will be on the traditional doctrines of the scope of bargaining. The industrial pattern includes negotiations over rates of pay, hours and other conditions of employment. The phrase, "conditions of employment," has a meaning which leaves precious little which is *not* subject to bargaining under traditional university modes of operation. This is especially true if collective bargaining is to be the only mechanism whereby faculty participate in governance. For example, a task force for the American Association of Higher Education reported faculty concerns to be legitimate in the following five categories: educational and administrative policies, personnel administration, economic issues, public issues and the institution and procedures for faculty representation.[13] In addition, the faculty has a consuming interest in the following issues: admissions standards, the content of curricula, degree requirements, grading standards, standards for academic freedom, standards for student conduct and discipline, and procedures for appointment of department chairman, deans and the president. Such issues would be traditionally outside of the scope of bargaining in the private sector.

1. Range of Faculty Concerns

2. Determining the Bargaining Unit

The second distortion of industrial model of collective bargaining would be in the area of defining the bargaining unit. Elsewhere in this publication there is a discussion of the difficulties in excluding part-timers from units representing full-time faculties; the problem in defining who is management and who is labor, especially as it relates to the department chairmen; the multi-campus issue; and the inclusion of semi- or nonteaching professionals in bargaining units with teaching faculty. Many of the accommodations made by labor relations boards on these unit determination cases may not have been, by traditional standards, sufficiently cognizant of the special nature of college and/or university governance.

3. Concept and Practices of Shared Authority

A third area of distortion is the changes in the concept and practices of shared authority. The arguments are as follows:

a. If other than the pure professor is included in the term faculty, the administration and the governing board may be unwilling to share their legal authority with such a group;

b. It is impossible for shared authority to exist in an atmosphere where the faculty and administration view each other as adversaries;

c. Under the National Labor Relations Act certain essential elements of a shared authority system may be unlawful;

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[12] Kenneth F. Kahn. "The NLRB and Higher Education: A Study in the Failure of Policy-making Through Adjudication." *UCLA Law Review*, Volume 21, No. 1, October 1973.

[13] Task Force on Faculty Representation and Academic Negotiations. *Faculty Participation in Academic Governance.* (Washington: National Education Association, 1967) pp. 27-30.

d. It has been recognized in the public employment sector that collective bargaining through the traditional committee system, whereby faculty and administration share authority, may be incompatible.

It has been suggested that the most common mechanism for achieving shared authority at the campus level is the faculty or academic senate. It is here that the fourth area of distortion may occur. Under traditional labor legislation in many state collective bargaining statutes, the continuing operation of a faculty senate, where there is a certified exclusive bargaining representative, may be held to be an unfair labor practice. It is possible that at some future date a faculty senate would be declared a "company union" if there is no statutory or judicial recognition of the special nature of academic governance.

4. Faculty And Committee Structures

This distortion may also occur in the entire committee decision-making process at the department and school levels. Basic program and personnel decisions are typically made at these lower levels through regular consultation between faculty and administrators. Whether these relationships could continue under an industrial model of collective bargaining is unknown.

5. Role of Student and Alumni

A fifth distortion is possible in that the evolving participation of students and other groups (e.g. alumni, nonteaching professionals and community groups) in the formal decision-making structure of the college or university may be altered drastically by the imposition of a classic industrial model of collective bargaining. If academic collective bargaining is not tailored to take into account students and these other groups in the process, there may be harmful effects on their presumably legitimate interests.

Public Policy Issues

Legislation to Effect Policy

Basic Question: Is Bargaining in the Public Interest?

The fundamental purpose of any legislation should be to effect in whole or in part a policy which will prove to be in the public interest. The basic question arising in this instance is whether or not collective bargaining for personnel in postsecondary education and legislative provision therefore *is* in the public interest and, if so, what rights, privileges, perquisites, responsibilities, duties, limitations etc. may naturally attach thereto. A number of subsidiary questions must be considered.

1. *The Public Welfare*

Does it Promote Public Welfare?

Does the cumulative experience in private employment and elsewhere in public employment indicate that the statutory provision and protection of the right of public employes in institutions of postsecondary education to organize and bargain collectively serve and/or safeguard the public interest by either removing or inhibiting certain recognized sources of strife and unrest?

2. *The Public Tranquillity*

Does it Contribute to Public Harmony?

Do such protections and provisions facilitate and encourage the amicable settlement of disputes between employers and their employes involving terms and conditions of employment and other matters of mutual concern? In other words, does the collective bargaining process offer a hope of continuity of higher educational services, and does the presence of harmony contribute to the quality of such services? Does, in fact, the collective bargaining process contribute to a spirit of harmony?

What Are the Benefits of Contracts?

3. *The Benefit of Contract*

Should employes in postsecondary education institutions, which are political subdivisions of the state, have expressed in affirmative legislative tone the right to form, join and assist employe organizations, to bargain through representatives of their choosing, and establish, through actions and activities undertaken in concert, a contractual relationship which is committed to writing, covering the resolution of such matters of mutual concern on which there is a difference of perspective and perception? What is the specific responsibility of the legislature in this regard?

Should There be Separate Legislation for Postsecondary?

4. *The Unique Nature of Postsecondary Education*

Are the vehicles, through which public education of a postsecondary level is provided, sufficiently distinctive to deserve separate legislative provision? The perceptions of academics have been presented. The question here is whether or not public policy conforms to that perception.

With its Varied Population, Who Should be Excluded?

5. *The Varying Populations of Postsecondary Education*

Are there sufficiently significant differences among administrative, faculty, nonprofessional and student employes of institutions of postsecondary education and among students as students to call for the provision of or the exclusion from such rights and responsibilities in a distinctive manner for each or any? A postsecondary educational institution is a community composed of a conglomerate citizenry. Roles, backgrounds, preparation and perceptions differ markedly, as do the quantity and quality of contributions.

Position of Administrators?

Nonprofessional Employes?

Student Employes?

A number of questions evolve: Are educational administrators "supervisors" in the private sector sense of the word, and as such should they be allowed or excluded from the exercise of the right of collective bargaining in their own behalf? Are nonprofessionals employes in public employment significantly different in any material respect than their counterparts in private employment? Are students who are also employes of the institution entitled to consideration in respect to the right to organize and bargain collectively? Does the nature of such employment, either on the maintenance staff or the academic staff, require any separate consideration? Are students as students entitled to access to collective bargaining rights when their relationship is not one of employe-employer?

Student Qua Student?

Are Existing Collective Bargaining Agencies for Private Sector Appropriate for Postsecondary?

6. *The Nature of State Services*

Are the state agencies provided for assistance to or the amelioration of such activities in the private sector and/or for other elements in the public employment adequate and appropriate to provide such services to those in postsecondary educational institutions? Can effective conciliation, mediation, fact-finding and/or arbitration services be provided effectively by the same agency for both private and public employes? Is the nature of postsecondary educational institutions sufficiently distinctive from other aspects of public employment to require differing criteria for panels of mediators, fact-finders and/or arbitrators?

Should There Be the Right to Strike?

7. *The Right to Strike in Postsecondary Education*

Does public policy require the denial of the right to strike to such employes and, if so, what alternative resolution mechanisms are essential for the dissolution of potential impasse? Is the public health or safety involved? Does

irreparable damage to the general society or to the individual student ensue if there should be a work stoppage? Should the right to strike, if granted, be a limited or conditional one requiring that efforts at mediation and fact-finding be exhausted before permission to strike is granted? Is mandatory and binding arbitration of all issues at impasse a desirable alternative in the public interest at any public postsecondary educational institution?

Are There Alternative Mechanisms?

8. *The Identity of the Public Employer*

How should or can the definition of the public employer be afforded so as to allow the employe the opportunity to bargain directly with those capable of making effective decisions through processes involving compromise such as will constitute bona fide negotiations? Should, in economic matters, for example, the bargaining agent have access to those who control the purse-strings, or must the bargaining agent contend with the intricacies of the bureaucracy? This is an essential question in instances where the state government provides full funding for public postsecondary institutions. The ultimate question is whether, lacking such access, the bargaining agent will be confronted by agents of management who actually have "authority to bargain."

Who is the Public Employer?

9. *The Adaptation of Administrative Structures*

What levels of coordination in the hierarchy of statewide relationships will be necessitated that represent departures from or amendment to existing mechanisms or processes? A corollary question has been implied as to whether or not it is in the public interest to effect a policy which may require a total or partial reorganization of long-established and time-honored operational patterns to which fundamental and continuing state functions attach. These questions will be discussed further in another chapter. Specifically, however, to what degree and in what manner should provision be made for either conformity to or interface with the budgetary processes of the state and systems of postsecondary education and/or individual institutions?

Can Academic Collective Bargaining be Adapted to Hierarchy of State Structures?

10. *Length of Contract*

Is it consistent with public policy to allow for multiyear contracts if state funding is provided for by means of annual appropriations?

What Should be the Length of Contracts?

11. *The Principle of Exclusivity*

Is the nature of public employment, especially in the professional field of postsecondary education, such as to encourage a public policy which provides for recognition of a "sole and exclusive" bargaining agent in what has been traditionally a highly individualized profession, or are such considerations worthy to be considered as time-worn, even archaic anachronisms? Each of the above and a myriad of other questions which may attach is deserving of a thoughtful response. Answers thereto should be either explicit or implicit somewhere in the entirety of the legislation.

How Does the Concept of "Exclusive Agent" Relate to Traditional Individualism in Postsecondary?

V. ENABLING LEGISLATION: COMPONENT PARTS

Types and Scope of Labor Legislation

Coverage: Specific or Broad

There are, as has been indicated, a series of possible approaches or types of statutes that can be considered under the general umbrella of labor legislation. One distinction is the coverage of the law. For instance, the statute can cover a specific employe group or industry such as nurses, firemen, transit workers, state employes and/or postsecondary education. On the other hand the statute can be broadly based in its coverage, such as a general public employe labor law.

Scope of Statute: General Enabling Legislation

Another distinction is the scope of the statute. The legislation can be in the traditional mode of enabling labor legislation which has as its focus the free selection of an "exclusive bargaining agent." This type of statute has as its primary goal the development of a system that permits employes to engage in formal collective bargaining. There are options to such legislation however. It is possible that the statute will allow some form of informal consultation—such as a "meet and confer" law. In fact, it is possible that the labor statute will describe a decision-making process outside of the typical labor-management system of collective bargaining. The statute might establish some form of deliberative councils or employe legislative bodies.

"Meet and Confer"

Deliberative Councils

N.L.R.A. System as Basic Model

The private sector of our economy is largely covered by an enabling statute which is based on the principle that employes should have a structured system for determining whether they choose collective bargaining as a decision-making process. The National Labor Relations Act, hereafter designated the N.L.R.A., is the basic labor act describing this system. Most state and municipal units which have developed labor legislation to date have used some modification of the basic federal statute.

The purpose of this chapter is to describe the component parts of this type of enabling labor legislation. It is not meant to reflect a value judgment in favor of this process or to exclude the various options to collective bargaining that are available. It is clear that the general pattern of labor legislation in the United States is almost universally set by the model of the N.L.R.A. It is most likely that as postsecondary education becomes covered by labor legislation, this enabling law will be the basic pattern adopted.

Purpose and Coverage

1. *Purpose*

Statement of Purpose

Most enabling legislation begins with a statement of purpose. This statement is meant to be reflective of the public policy decisions inherent in such a statute. The statement will serve as a preamble and one of its goals will be to establish a "mood" for the interpretation of the document. It serves as a statement of philosophy which will ultimately be used by the agencies responsible for the interpretation and application of the act. The primary agency charged with this role will be an employment relations commission or board (hereafter referred to as board). In addition, there will be times when a court will need to evaluate decisions under the act and the statement of purpose will provide judicial guidance as well.

Employment Relations Board

The N.L.R.A. provides an example of such a statement of purpose:

> "It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection."

Types of Purposes

There is a broad range of purposes that might be served by a labor law. The federal act enumerates several. The types of purposes that might be accomplished by the implementation of enabling legislation for labor-management relations are:

a. The promotion of collective bargaining as a decision-making option.

b. The encouragement of industrial peace in order to assure continued production and maintenance of service, uninterrupted by work stoppages and confrontation.

c. The provision of a systematic, controlled structure for the selection or rejection by employes of the decision-making process of collective bargaining.

d. The prescription of the parameters for actual negotiations.

e. The development of a minimum set of standards for labor and management behavior in the area of employment relations (prohibited practices).

f. Safeguarding the public interest by maintaining a free flow of commerce and the maintenance of vital services.

Public Policy Issues:

1. Philosophy of State Regarding Right of Employes to Bargain Collectively

At least two public policy issues are inherent in the development of a labor law and in the resulting statement of purpose. A central issue is the philosophy of the state (or other governmental unit) regarding the right of employes to choose to join together for the purpose of bargaining collectively with the state (or state agencies) over wages, fringe benefits and other terms and conditions of employment. An example of one position on this question of public policy is Section 7 of the N.L.R.A.:

> "Employees shall have the right to self-organization, to form, join, or assist labor organizations to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection."

Although the federal statute quoted provides this statement of public policy regarding the private sector of our economy, only through executive order do federal employes have a collective bargaining system. They are not covered under traditional enabling legislation. Many state legislatures have also exhibited a reluctance to extend, by law, the full system of collective bargaining to state employes.

2. Types of Relationship Most Appropriate in Public Employe-Management Relations

A second basic public policy issue concerns the type of relationship considered most appropriate in the area of public employe labor-management relations. The typical process—that described in the N.L.R.A.—is the use of an exclusive bargaining agent who is empowered to represent employes through collective bargaining. The parties to the collective bargaining relationship are obliged to "negotiate in good faith." It is a prohibited practice on the part of either the union and the employer to refuse to bargain. The N.L.R.A. defines this responsibility as: "Performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of

employment . . . ." Failure to so negotiate is an unfair labor practice and the board will require the offending party to comply.

2. *Coverage*

Coverage: Employer and Employes

The coverage of the act will specify the employers covered by the statute. It will also designate the employes included and excluded from the coverage of the law.

Employer

The Employer

The description of the employer under the act becomes a complex issue in the public sector. The management hierarchy and decision-making structure of a public unit is more complex and contested than that of a private employer. The collective bargaining relationship is one that requires a relatively well-defined management responsibility. Absence of such clarity may well breed confusion on the part of the employer as a traditional management posture is assumed.

And the Need for Clarity

Postsecondary education represents an example of the potential confusion in this regard. If a state public employe labor statute is passed that covers a public four-year institution of higher education, it can become a quite intriguing exercise to determine where the focus of collective bargaining responsibility will reside. Is it the campus administration? A board of trustees or regents? The coordinating board of postsecondary education in the state? The department of administration at the state governmental level? The legislature? The governor's office? Other options can be included in this list. There would be a few public sector employers where competing claims of management interest would not be found. The prospective advent of collective bargaining will bring into focus these competing claims. Public employe labor laws sometimes specify the office or group that will be recognized as the employer.

Competing Management Claims in State Context

Employes

Employes Limitation of Scope

The scope of coverage may not extend to all employes in a jurisdiction or sector. Most enabling labor laws exclude certain types of employes from coverage. Typical exclusions are agricultural laborers, independent contractors, supervisors, confidential employes and guards or watchmen (at least they must be in a separate unit). Other limitations on the scope of coverage may be based on such considerations as full-time regular employes versus part-time or temporary employes. Some statutes exclude seasonal employes from coverage.

Types of Faculty

Institutions of higher education raise specific issues in this regard. Should faculty be covered by a labor law? Is their status in traditional university governance systems a managerial role? If faculty are to be included, should only regular faculty be covered and not lecturers and other part-time instructional faculty? Should research faculty who receive their support from external funds be covered? Are department chairmen supervisors or faculty?

Types of Student Employes

The status of students as employes is another example of the unique nature of the university as an employer. Many student jobs are limited to students; that is, student status is a prerequisite for employment. In other cases, student employment is an inherent part of the educational process, such as teaching

assistants or medical interns. For other students, employment at the university does not differ significantly from employment elsewhere. The question of withholding employe status from students under the law is a multifaceted issue but one that must be faced in legislation covering colleges and universities.

Administration of the Statute

Structure for Administration: Board or Commission

Enabling legislation normally specifies the structure by which it will be administered. A normal pattern is the establishment in the statute of a board or commission which would have two basic levels of responsibility. On the one hand it is charged with the administrative responsibility for carrying out the various processes and procedures of the labor law. The second level of responsibility is that of issuance of "orders." These orders differ from the administrative processes of labor relations and include such matters as certification of a bargaining agent and declaration of the existence of an unfair labor practice (or prohibited practice).

Administrative Processes

"Orders"

Makeup of Board

The makeup of the board is normally specified in the act. It is typically a board appointed by the governor with the ratification of the legislature. The board is responsible for policy development regarding implementation of the act and general oversight of administrative procedures. The board also acts as the final hearing body under the act and is normally supplemented by an administrative staff which functions under its general direction.

Administrative Staff

N.L.R.A. Structure

The N.L.R.A. and its structure and organization provide an example of how labor statutes are administered. The N.L.R.A. contains its own implementing and interpretive structure, the major component parts of which are the National Labor Relations Board (N.L.R.B.), the general counsel and the N.L.R.B. regional directors. The major functions of these three component parts of the administration of the N.L.R.A. are:

N.L.R. Board

(1) *National Labor Relations Board*—The board is the governmental agency primarily responsible for the administration of the N.L.R.A. The board is composed of five members appointed for five-year terms. Over-all policy determination is the basic responsibility of the board. It also accomplishes two basic administrative functions:

a. Determination of employe representation, and

b. Decisions as to the existence of unfair labor practices.

General Counsel (Administrative Head)

(2) *General Counsel*—The general counsel is the administrative head of the organization. General supervision of officers and employes of the board is a major responsibility of the general counsel. A second responsibility is the prosecution of unfair labor practice cases and the enforcement of N.L.R.B. orders.

Regional Directors (31 Regions)

(3) *Regional Directors*—The National Labor Relations Act is administered on a regional basis. There are 31 such areas which are under the direction of regional directors. It is at this level that unfair labor practice charges and representation petitions are filed and originally handled.

One or Many State Boards?

The advent of public sector labor laws has raised the crucial question of the scope of jurisdiction that is appropriate for a labor board. Should there be one labor board at the state level to handle all types of employment relations matters not covered by the federal statute? Since several states have developed separate legislation for individual employment groups at the state level, it raises the question of whether each of these groups should have its own administrative agency or whether there should only be one such board.

Uniqueness of Postsecondary Institutions

Postsecondary education represents an "industry" where this question can be focused. There are unique qualities and characteristics to institutions of higher education and they provide a unique service in our society. These institutions tend to have governance systems that are not fully comparable to other sectors of the economy—either public or private. These are some of the reasons arguing for both separate labor legislation and a separate administrative agency for postsecondary education. Some observers, however, believe that the principles of labor relations are flexible enough to respond to various structures of employment and that a separate labor board is neither economical nor necessary.

Judicial Review

Enabling labor legislation is a form of administrative law. The scope and responsibilities of the board are extensive. The law is not excluded, however, from judicial review.

Role of the Courts in Relation to Board and Board Decisions

The role of the courts in regard to labor legislation takes two basic forms: specified judicial review and relief in equity. The act may specify judicial review for certain processes under the act. For instance, the N.L.R.A. provides such a judicial review to "any person aggrieved by a final order of the Board." The N.L.R.A. provides for additional enforcement of such orders and makes them reviewable under the act. An order relating to an unfair labor practice is an example. When a judicial review is sought, the court considers the following types of items:

a. Determination of whether the board has conducted a fair hearing.

b. Consideration of whether the findings of facts and conclusions of law are supported by substantial evidence on the record as a whole.[14]

c. Review of the order to determine whether it is reasonably designed to carry out the policies of the act.

Relief in Equity

The second basic way the courts become involved is distinct from that of specified judicial review. This involves the process of obtaining relief in equity and is obtained by filing of an independent suit. Normally in these suits, it is necessary that a constitutional question be raised or that the board is charged to have acted arbitrarily or in a way that exceeds its authority, and that the person seeking the suit is threatened with irreparable harm or injury.

Administrative Organization for Bargaining

Right to Negotiate

It is a fundamental precept of any negotiating situation that a bargaining agent certified to negotiate for a defined bargaining unit or community of interest should have the right to negotiate with the authority, or the representative agent of such authority, that is effectively capable of making decisions regarding the issues under negotiation.

Statewide vs. Local Negotiations

It follows, therefore, that if the system of higher or postsecondary education is a centralized system on a statewide basis, negotiations too might well occur at the state level, whereas if the public higher education community

[14] This particular point is but a classic example of a consideration which should be borne in mind generally. The words themselves seem crystal clear and strikingly simple, yet they have been subject to varying interpretation. Whenever one does borrow, for whatever valid reason, the language of the N.L.R.A. it is likely to follow that one is, in fact, also borrowing, albeit unconsciously, the body of administrative rulings of the N.L.R.B. and the case history of litigation in the courts which has accumulated in the almost four decades of the existence of the N.L.R.A. Some research on the significance that has been attached to such words might well be in order.

is decentralized, with a great degree of autonomy or even independence, then negotiations more logically and naturally should occur at the "local" level.

Statewide vs. Local Issues: Mixed Negotiations (Bilevel)

Such a simple prescription, however, fails of complete clarity. It may well be that in even the most unified systems some issues would be properly reserved to statewide negotiations, while others, which might reflect the significant and distinctive differences between individual institutions, would be better left to "local" negotiations to be carried on either simultaneous with or subsequent to the statewide negotiations. This bilevel set of negotiations might or might not require coordinated efforts between the levels of authority or bodies of authority which may, in any given set of circumstances, constitute management. Such may be applicable even in those situations where provision of state aid is general, but will certainly be relevant in instances of state-required approval of budgets, either in their entirety or on a line-item basis.

Who Specifies Negotiations for Management?

Upon whom in any level of management should the direct responsibility for negotiations devolve, and what latitude is provided for either internal reorganization or external supplement whether budget-wise or personnel-wise? This must be explicit or confusion and/or contention will result.

Limits on Right to Make Agreements

Equally clear must be the specification of the limits, if any, on the right of the participants to make agreements without qualification or reservation, and the prescription of where, on the management side of the table, the responsibility for ratification falls. This will, of course, be clarified within management as a very important practical matter during the course of bargaining. But what is at stake here is the right of the bargaining agent to know the parameters and the ultimate complications of the entire bargaining process.

Responsibility for Ratification

Provision of Clarity

There are varying means by which such provision of clarity may be accomplished. If, for example, the legislature is the actual funding agent, it may be desirable to designate the legislature as the ratifying party, at least of economic matters. Investigation of legislation enacted in Wisconsin may throw some light on this.

Ratification by Legislature

Taylor Law (New York) Provisions for Legislative Appeal

Another example of provision for such concerns is the requirement of the New York Taylor Law that the following language appear in any contract (in type equivalent in size and boldness to the largest used in the publication of the contract):

> "It is agreed by and between the parties that any provision of this agreement requiring legislative actions to permit its implementation by amendment of law or by providing additional funds therefore, shall not become effective until the appropriate legislative body has given approval."

Such approach allows the parties to move forward to fruition of tentative agreement, but reserves for the legislature protection against intolerable intrusion on its areas of eminent domain.

Results of Lack of Clarity

Any specifications of limitation or concentration of responsibility and/or authority will undoubtedly add to the contention which will arise in the drafting and enactment of the legislation. However, these must be regarded as short-term costs when weighed against the implications of the continuing and compounding complications of the failure to have provided such clarification. Equally clear must be the delineation of procedures and prohibitions at several ongoing stages of the collective bargaining process.

Recognition

Provision in Law for Recognition of Employe Bargaining Agent

An important component of a labor law is the description of a process for determining whether employes in an appropriate bargaining unit wish to be represented by a bargaining agent for purposes of collective negotiations with their employer over wages, fringe benefits and other terms and conditions of employment. Without such a process this question would normally be determined by the willingness of an employer to grant recognition on a voluntary basis or the capacity of a group of employes to apply pressure as a basis for obtaining such recognition. The absence of a process of determining this question characterized industrial relations in the United States prior to the mid-1930s. It was a major factor underlying instability in labor-management relationships. The absence of any such process meant that recognition strikes were a common pattern in the field of employment relations.

Advantages of Specifying Process for Recognition to:

Employer

Employes

Union

General Public

The development of an orderly process of testing this issue serves the interest of at least four distinct groups. It serves the employer's interest in making certain, before negotiating with a union, that the union truly represents the employes and has been selected for that purpose by the employes involved. It provides employes a system for initiating and selecting a collective bargaining relationship or disbanding such a relationship when it is no longer of interest. It assists the union in determining the interest of employes in having the union represent them as an exclusive bargaining agent. It also gives the union a basis for stability in its relationship with the employer until the employes initiate a decertification proposal. The general public is well served by a process of determining representation. This question can be evaluated and resolved without confrontation and the resulting effects on industrial peace and the availability of goods and services.

Representation Procedure

1. *Representation Procedure*

Basic Stages

The systems of employe representation that have been developed in the field of labor management relations have tended to follow the flagship statute—the National Labor Relations Act. State statutes have made modifications in the process, but tend to follow the basic outline in the federal law. The basic stages in the systems of determining representation are:

a. The petition stage
b. The hearing stage
c. The election
d. The certification

A brief description of these basic stages of representation determination will illustrate the range of considerations that are necessary in developing such a system.

Petition to Board

a. *Petition Stage.* The first step in obtaining or determining representation status is the filing of a petition with the agency charged with the administration of the process. That agency is normally an employment relations commission or board. For purposes of reference in this description the term "board" will be used. The certification petition may be filed by any employe or group of employes or by any individual or labor organization on the behalf of the employes. It may also be filed by any employer who has received recognition demands from an agent and wishes to test the validity of those demands.

Who Files?

Role of Board in Relation to Petitions

Upon receipt of a petition, the board considers the following types of matters: (1) Is the employer involved covered by the basic labor statute? (2) Is the union claiming recognition as a bargaining agent for the employes in

the unit? (3) Is there a substantial degree of interest on the part of the employes in the unit—normally 30 per cent? and, (4) Do the employes involved constitute an appropriate bargaining unit?

These determinations must be made by the board prior to the holding of an election. The question of whether the employer is covered by the statute and the question of whether the union is claiming recognition for the employes involved can normally be determined without a hearing. The last two questions, which are basic to the acceptance of the petition, often require an additional process of consideration—probably a hearing. The hearing will also consider other issues such as the conceivable interest of an intervening union.

Pre-election Hearings on Unresolved Issues

b. *Hearings.* Although boards are not required to hold hearings on questions of representation, if there are unresolved questions the normal pattern is that the board holds a public hearing prior to any election. In fact, an election without a hearing is normally held only in those cases where the board accepted the petition as meeting their tests and the parties agreed to an election. In such a case there is no unresolved issue such as an appropriate unit or a question of adequate employe interest.

Parties to the Hearing

Questions about employe interest, appropriateness of a unit, etc., do commonly exist, and the hearing process provides the mechanism for their resolution. The hearing is normally chaired by a professional employe of the board. It is a public meeting announced to the employer, the petititioning union and any other persons or unions known to have an interest in the proceedings. In fact, other persons or unions may officially intervene at the hearings if they meet specified requirements. The normal intervening body is a competing union.

Usual Hearing Concerns:

The hearing will consider a broad range of questions and concerns related to the petition. The more common concerns dealt with in a hearing are:

1. Evidence of Employe Interest

(1) Evidence of employe interest: the petition must present evidence that a substantial number of employes support the petition. This has been interpreted as 30 per cent minimum in most cases. The board will normally accept evidence such as authorization cards, dues records, petitions or applications for union membership. An intervening union will not need to show the same level of interest. A five per cent showing has been declared adequate in most cases.

2. Disallowance of Elections

(2) Reasons why an election should not be held: several bases for not allowing a petition for an election might be raised in the hearing process. For example, an election may have been held during the past year and this is normally adequate grounds for denying or postponing a new election. Another reason for denying an election would be the existence of a current collective bargaining contract. This is known as the "contract bar rule." Sometimes an election is denied because of the instability of the proposed bargaining unit due to planned expansion or contraction of the employer. These factors are not always a matter of law. If state statutes are not specific, the precedent of interpretation under the N.L.R.A. will become a guiding factor.

"Contract Bar Rule"

3. Appropriate Bargaining Unit

(3) Appropriate bargaining unit: the appropriateness of the unit and questions related to inclusion of specific positions in the unit are the most common issues raised in the hearing process. Determination of the size and composition of the unit is a complex issue. It is described in some detail in a subsequent chapter. The board gives consideration to three major factors in determining the appropriateness of a bargaining unit. The first factor is the similarity of duties and conditions of work among the employes involved. History of collective bargaining is a second consideration. The wishes and desires of the employes themselves is a third consideration.

Election Process

c. *The Election Process.* Although it is possible to obtain bargaining agent status without an election, it is uncommon. In a case where a petition has been allowed and other questions have been determined, the board announces and conducts a representation election. The board has complete control over the election system. It makes all necessary rules and actually conducts the election itself. The ballot will contain the name of the union seeking representation, any intervening union and, an important component, the option of "no union."

Announced and Conducted by Board

Election Options

Union Must Win Majority of All Votes Cast

To win an election, a union must obtain a majority of all the votes cast. It is not necessary to obtain a majority of the employes in the bargaining unit who were eligible to vote. If no option on the ballot receives a majority of the votes cast, a runoff election is conducted. The runoff election is held between the two choices receiving the largest and second largest number of votes in the first election. If the option of "no union" was one of the two highest vote getters, it is included as one of the options in the runoff election.

Runoff Elections

Board Certification of Results

d. *Certification and Termination of Certification.* If the results of the election support the selection of a bargaining agent, the board certifies that the union has obtained exclusive bargaining agent status under law. Unions certified by this process enjoy the full privileges and responsibilities of an exclusive bargaining agent. These privileges should be specified by a statute at the state level unless the precedent of the N.L.R.A. is acceptable.

2. *Decertification*

Decertification Process

The certification process has as an end result a statement by the board that a specific union is the chosen exclusive bargaining agent for a particular bargaining unit. Decertification is just the opposite—it is a statement by the board that a certain union is *not* the bargaining agent for a particular unit. The decertification process is almost identical to the certification process. A decertification system is initiated by a petition requiring the same test. The question being raised is whether a specific union should *not* be recognized as the exclusive bargaining agent. If the union being contested does not win a majority of the votes cast, the board then certifies that it is *not* the exclusive bargaining agent for purposes of collective bargaining. It is not necessary that a separate provision for decertification be developed. The certification process can be used to select "no agent" status.

3. *Exclusive Bargaining Agent Status*

Benefits and Responsibilities of Exclusive Bargaining Status

Obtaining exclusive bargaining agent status brings with it certain benefits and privileges. It also raises questions of responsibility on the part of the agent and significant questions concerning the relationship of agent status to the rights of individual employes and other employe groups.

Benefits:

There are a number of benefits accruing to a certified union. Most important is its status as exclusive bargaining agent for the employes of the unit. The employer is obliged to deal only with the certified union in the determination of wages, fringe benefits and other terms and conditions of employment for all employes in the bargaining unit. The employer is not free to develop such policies and programs with individual employes, informal employe groups or other agents representing the employes. The employer also is not permitted to unilaterally establish new policies and is obliged to negotiate these matters with the certified agent in a good faith attempt to determine their nature through mutual agreement. The certified union enjoys this status with some security as once an election has been won, the

Employer Must Deal with Certified Union

Union Status

representation question cannot be raised for one year. If a contract is arrived at and is in effect, and it does not exceed three years in length, the contract itself represents a bar from raising this question. Certain types of strikes and picketing by other unions or agents are not permitted when a certified agent has been named for the unit.

Relationship of Agent to Individual in Bargaining Unit

In juxtaposition to these privileges of the certified union, there are a series of crucial and important questions which should be raised regarding the relationship of the agent to the individuals in the bargaining unit, the individual union members and employe groups other than the bargaining agent.

Responsibilities of Agent:

Equal Representation for All Employes

a. *Equal Representation Responsibilities.* A certified bargaining agent enjoying the rights and privileges of the statute has a corresponding duty to provide equal representation to all employes in the unit. This mandate is a basic responsibility of the certified union and its denial is basis for revocation of certification. Equal representation does not mean necessarily that all members of the bargaining unit receive the same benefits and privileges. It does mean that the agent must provide equal consideration to all employes in the unit in accomplishing its bargaining responsibilities and that any differences obtained must not be arbitrary, discriminatory or capricious.

i.e.: Equal Consideration

Contract Administration & Grievance Handling

The right of equal representation is not limited to the terms of the negotiated agreement. The certified union must represent all members of the unit equally in matters of contract administration and grievance handling. This does not mean that the union must process every grievance or take every grievance to arbitration. It once again is measured against the standard of equal consideration of these matters in a manner that is not discriminatory.

Rights of Individual Employe vs. Union:

b. *Individual Versus Agent Rights.* Closely aligned to equal representation rights are questions raised by the rights of an individual employe versus the rights accruing to a certified bargaining agent. Examples of these tension areas are the following:

1. Initial Employment Exclusive of Union Membership

(1) Right to employment: except for specified industries, an individual has the right to obtain employment exclusive of any membership requirement by the agent. Union membership cannot be a requirement of employment. This principle would not extend to continued employment, and an individual may be required to join the union in order to maintain employment after a probationary period.

2. Union Membership

(2) Right to union membership: certain privileges within the union are limited to those holding union membership. Every member of a bargaining unit has the right to join the union in order to obtain these privileges.

3. Due Process With Employer

(3) Right to individual due process at the work site: an individual employe may present a grievance and have it adjusted by the employer without interference by the agent, although the union is allowed to be present at any such adjustment meeting. The adjustment must be consistent with the terms of any collective bargaining agreement.

These examples illustrate the types of tension areas that exist between the rights accruing to an individual in our society and in his employment versus those of a certified representative agent. Some universities have maintained individualized employment arrangements in order to recognize the distinctive contribution and status of certain faculty members. This system may not necessarily be continued in a consensus bargaining relationship.

4. *Status of Non-Agent Employe Groups*

4. Non-agent Employe Groups

There exist at times other employe groups which serve some consulting or recommendatory role. This form of participatory government is a strong

tradition in institutions of higher education. The advent of collective bargaining under enabling legislation raises the problem of the creation or existence of "company unions." An employer may not dominate or provide undue interference in support of an employe organization involved in employe representation for purposes of collective bargaining. Although the analysis of such domination or interference is quite complex, there is a basic principle that pertains: does the employe organization relate its central and crucial consideration to the employer or to the interest of employes?

"Company Unions"

Uniqueness of University Academic Departments & Councils

The university decision-making structure of academic departments and employe deliberative councils or senates represents a significant exception to traditional management structures in the private sector.

5. *Union Security*

Options for Union:

Most enabling legislation does not provide for or guarantee any form of union security. Those provisions which describe the basis of required union membership are normally developed through bargaining. Some types of required membership are declared illegal, and the range of these are as follows:

a. Open Shop

a. *Open Shop.* Union membership is not a condition of original employment or continued employment. There is no compulsory nature or requirement to union membership.

b. Dues Checkoff

b. *Dues Checkoff.* The employer agrees to deduct union dues from an employe's pay check. The individual employe must sign an authorization for the dues deduction.

c. Membership Maintenance

c. *Maintenance of Membership.* This is an agreement between the employer and the union which requires all employes who have authorized a dues deduction to continue in that status except for stated periodic opportunities to withdraw from such status. A common arrangement is for the dues deduction to be maintained on a continuing basis, except that once a year there is a 30-day period of time when an individual may withdraw. A similar arrangement can apply to union membership.

d. Agency Shop

d. *Agency Shop.* Union membership is not required, but all members of the unit are required to pay a service fee as a condition of continued employment. The fee is normally equivalent to the cost of union membership, but actual membership in the union is not required.

e. Union Shop

e. *Union Shop.* Union membership is not required as a condition of original employment, but within a specified period of time an individual is required to obtain union membership and that membership must be maintained as a continuing condition of employment.

f. Preferential Hiring

f. *Preferential Hiring.* This arrangement requires the employer to hire union members but only to the extent that the union can supply a sufficient number of qualified individuals.

g. Closed Shop

g. *Closed Shop.* An original condition of employment is that the individual applicant be a union member. This form of union security is not legal except in the building and construction trades industry.

Federal law (N.L.R.A.) does permit union security arrangements. State statutes may forbid "agreements requiring membership in a labor organization as a condition of employment" and such state laws currently supersede the federal statute in this regard.

Unit Determination

Unit Determination

The special problems of postsecondary education in collective bargaining are brought into sharp focus during unit determination. As noted previously, unit determination is one segment of the recognition process. It is said that a bargaining unit must be fairly homogeneous, meaning that its members must have somewhat similar interests concerning bargaining issues and priorities. What is sought is a certain "community of interest," as the National Labor Relations Act prescribes, or some other minimum standard of similarity. Without this, some interest groups within a unit may find that their concerns are without representation in the flood of concern over majority interests.

"Community of Interest"

Size of Units

Balanced against this is a perceived need to make bargaining units as large as possible. If an employer must deal with an untoward multiplicity of units, he is obviously placed at a disadvantage.

Responsibility for Decision on Unit Composition Usually Assigned to Board

Standards & Criteria

Public sector collective bargaining laws are somewhat diverse in their approach to unit determination.[15] Most laws assign the responsibility for decisions on unit composition to an agency such as a labor relations board, and the boards are guided in their decisions by certain standards set in the law. Typically, for example, professional and technical employes must be placed in separate units from other workers. The most frequently used general standard is "community of interest," mentioned above, although the precise definition of this phrase varies from state to state. Other criteria might include "similar working conditions, desire of the employes, extent of organization among employes, effects of over-fragmentation, similar skills, principles of efficient administration of government, geographical location, history of collective bargaining and similar job duties."[16] Other less common statutory criteria include "common supervision, sound labor relations, wages, hours and educational requirements."[17]

Exclusions from Bargaining Units

Certain groups are often excluded by law from bargaining units. These may include managers, supervisors, appointed or elected officials, board members, confidential employes[18] or part-time employes. Other statutes specifically exclude department heads and administrative officials, personnel workers other than clerical and board or commission employes.

Determination By State Labor Relations Board

Where responsibility for unit determination resides in a board or commission, statutes typically give state labor relations boards the power to make further general rules concerning the makeup of the bargaining unit.[19] These general rules would be in addition to any criteria for unit determination which the statute may require specifically.

This issue of unit determination may present a special problem for

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[15] The discussion on exclusions is largely derived from: Dennis T. Ogawa and Joyce M. Najita, *Guide to Statutory Provisions in Public Sector Collective Bargaining-Unit Determination*, University of Hawaii, June 1973.

[16] *Ibid.* pp. 7-8

[17] *Ibid.* p. 8

[18] The N.L.R.A.'s definition of confidential employes includes those "who assist and act in a confidential capacity to persons who formulate, determine and effectuate management policies in the field of labor relations."

[19] One or two states do not give boards much power to determine units. Instead they very specifically mandate rigid statewide bargaining units among various classifications of employers (see e.g. Chapter 89 of the Hawaii Revised Statutes).

Problems in Unit Determination for Postsecondary

postsecondary education faculty.[20] Most college and university faculties are a collection of experts in a wide range of human knowledge. What they teach, how they teach, (e.g. in laboratories, in classrooms, on field trips), their training, their professional affiliations—all vary greatly. Nevertheless, the statutes and the general rules of the National Labor Relations Board as well as the state boards have not necessarily dealt with these problems. They are special issues, largely related to the disparate interests of college and university faculties.

1. *Nonteaching Professionals*

1. Nonteaching Professionals

Most institutions have a substantial number of nonteaching professionals, who have advanced training and professional duties, but who do not do classroom teaching. They may include librarians, coaches, researchers, admissions officers, counselors, health officers, attorneys, audiovisual specialists, to mention a few. While these professionals sometimes have a degree of training and expertise commensurate with teaching faculty, the question arises whether their interests are such that they should vote in the same unit.

2. *Adjunct Professors and Part-time Lecturers*

2. Adjunct Professors/Part-time Lecturers

Many colleges and universities make liberal use of adjunct professors, teaching faculty who are part-time or unpaid and who hold down part-time or full-time positions elsewhere. The argument is often made that this group has different interests, that loyalties are different and that they operate under different rules and different compensation schedules. With the different reward system, different career goal and loyalty to a different employer, some observers feel that part-time teachers are not closely allied to the interests of full-time faculty and should be in a separate unit.

Variance Among Institutions

This argument may be weaker or stronger depending upon the particular situation. In some universities the reward system may not be substantially different. The work schedule of some part-time professors is regular, and some enjoy and exercise full rights and privileges with the full-time faculty. Their qualifications, appointment and promotion procedures may sometimes be similar to full-time faculty. Therefore it is difficult to make a general rule on this issue if a decision is to be made on the community of interest theory.

3. *Faculty Assigned Managerial Duties*

3. Faculty & Munagement Duties

At some institutions faculty are assigned a variety of managerial or supervisory duties. Thus, some faculty may supervise teaching assistants or researchers or a battery of clerical personnel. In addition, some faculty are actually on split appointments. They may be half-time teaching faculty and half-time administrators. The question arises in such cases as to the extent to which these faculty members are actually managers or supervisors and, as such, should be excluded from the faculty bargaining unit.

Split Appointments

Department Chairmen

A special case to be noted in this regard is the department chairman. Faculties are ordinarily divided by discipline into separate departments, such as economics, history or chemistry. These departments are administered by chairmen who are almost always members of the faculty and may have some continuing teaching responsibilities as well. In some institutions they serve simply as administrative support, while basic departmental policy decisions are

[20]The following draws heavily upon the discussion in Robert K. Carr, and David Van Eyck, *Collective Bargaining Comes to the Campus*, Washington, D.C.: American Council on Education, 1973.

made by various departmental committees. In other institutions they may serve very clearly as managers. In still other institutions, their roles may vary from department to department.

4. *Confidential Information*

4. Confidential Information for Management (Advisors to Management)

Even where faculty members do not perform managerial tasks, they may receive or produce confidential information for management. They may serve as formal or informal advisors on special issues or may be asked to generate reports for management. For example, a business administration professor may be asked to produce a report on fringe benefits, and in the course of his work be given access to confidential labor relations strategy.

5. *Nature of the Academic Discipline*

5. Academic Disciplines & Professional Schools

The interests of faculty may vary with their academic discipline. These variations may become acute in the instance of the professional schools, such as law schools. The community of interest of law-school professoriate with members of the general faculty is weakened by several factors. Salary and fringe benefits must remain competitive with the market for lawyers in general. Training and curriculum is tied to the rules of the state bars. Professional standing is judged by outsiders (e.g. lawyers in general practice). This general argument has been accepted in several cases by the N.L.R.B., and it could conceivably be made for other professional schools as well, such as medical or dental schools.

6. *Multicampus Institutions*

6. Multicampus Institutions & "Community of Interest"

There is an evident trend towards centralization of institutions of higher education. Some institutions now include several campuses which may present a problem in unit determination. The natural tendency may be to make the unit as broad as possible and perhaps encompass several or all the campuses of a multicampus institution. If the individual campuses are substantially different in makeup or mission, a serious question could arise as to whether the community of interest among the faculties of the various campuses is sufficient to permit this.

7. *Faculty Committees*

7. Faculty Committees Performing Administrative Functions

Statutes often ban supervisors from the bargaining unit which may require clarification in a college or university. Under the widely used system of peer review, institutions of higher education rely heavily upon the action or recommendations of faculty committees in the processes of promotion, tenure and appointment. The question arises whether, in the actions the faculty committee members take, they perform substantial administrative duties. If so, they could conceivably be barred from the unit as supervisors.

8. *Faculty Funded by "Soft Money"*

8. Faculty Paid By Grants & Contracts

One other unit determination problem should be mentioned. It has not yet become a major issue in hearings before public employment relations boards and is not essentially a community of interest problem. It has to do with the sources of funding for faculty compensation. Many public institutions have significant numbers of faculty whose salaries are paid from "soft money," grants and contracts received by the institution. Much of the research effort of public institutions is funded by these outside sources. Faculty salaries are

usually paid from funds such as tuition, endowment income or state appropriations. It is important to keep "soft money" faculty in mind during the negotiating process, because the institution must go through a separate process to get extra funds to cover negotiated salary increases for this group. Ordinarily it must apply to the grantor or contractor. Because of these extra problems a legislature may wish to consider putting "soft money" positions into a separate bargaining unit in the statute.

Nonfaculty Employes

One final word should be said about college employes other than faculty. Such employes are somwehat diverse in their interests. But, generally speaking, they can be more easily fit into traditional categories than can faculty, and forming different bargaining units creates fewer problems. A janitor and a typist at a college are not very much different from their counterparts in industry.

9. *Students and Bargaining Units*

9. Role of Students

One problem which is unique to postsecondary education is the role of students in bargaining units. Most colleges and universities employ students in some capacity. Some perform tasks which are similar to those normally assigned to faculty members. Graduate students may even teach classes or engage in research as part of their job. Nevertheless, student jobs are usually temporary and part-time. They may be part of the student's educational program, as in the case of a medical intern or a doctoral candidate doing research. Thus, including the students in regular faculty bargaining units is of doubtful value. Their community of interest is too tenuous.

Student Employes

Impact on Students By Faculty Negotiations

Students in the normal capacity as the recipients of the instructional process, rather than as employes, are often deeply affected by the negotiations between faculty and employers. Many of the negotiated items are of immediate interest to students including teaching hours, office hours, counseling duties and class size. Negotiated benefits might also be reflected in increased tuition.

Possible Roles for Students In Collective Bargaining

It has been suggested that students could play a role in faculty bargaining and thus be able to protect their interests. This might be done in one of several different ways.[21] Students might be able to affect negotiations indirectly by finding allies on the negotiating teams. Second, they may be able, through agreement of both bargaining teams for example, to participate as observers. Such observers might be required to remain silent, or might be allowed to discuss issues of direct interest to students. Finally, students might be allowed to participate as members of one or the other negotiating team. In its fullest sense, this could even take the shape of a separate student bargaining team, which, by statute or by agreement of the other two teams, has veto power over certain specific matters which directly affect students. Alternatively, they might be allowed full rights to present proposals and vote on contracts. Any number of combinations is possible. But it should be noted that, as yet, students have been allowed participation under very limited circumstances, and experience in this area is not great.[22] Further it must be recognized that major complications can result.

Tri-Partite Bargaining

[21] For a fuller discussion of these matters, see Neil S. Bucklew, *Students and Unions*, Report No. 22, Center for the Study of Higher Education, The Pennsylvania State University, University Park, Penn., July 1973.

[22] Examples of institutions which have involved students in some capacity in the bargaining process include Worcester State College, Boston State College, Long Island University, Ferris State College.

Scope of Negotiations: What Is Negotiable?

Ways of Approaching What Is Negotiable?

There are at least three ways to organize a response to the question of what is negotiable. One can attempt to assess (1) what is being discussed at the bargaining table, (2) what is codified and put into a contract and (3) what the statute and/or the courts say is a proper subject of negotiations. What is discussed at the bargaining table often has no bearing on the state statute. An analysis of 101 collective bargaining contracts in postsecondary education reveals a very broad range of issues which have turned up in contracts, some of which are undoubtedly nonnegotiable under certain state statutes.[23]

Classification of States in Relation to Attitude Toward Collective Bargaining

According to Russell A. Smith, professor of law at the University of Michigan, states can be classified in three categories relative to collective bargaining statutes.[24]

"No Action" States

The first are the states that have not as yet faced up to the problem and are restricted to applying the principles of common law, common municipal law and constitutional law as applied to collective bargaining. Public sector employes in these states have little or no legal protection in their efforts at organization and collective bargaining and statutory guidelines on negotiable items are quite limited.

States With "Crisis" Legislation

In the second category are states having crisis legislation, enacted piecemeal to meet problems with teachers, police, fire fighters or municipal employes. Comprehensive legislation covering all public employes is lacking, and many of these statutes grant less than full rights to public employes.

Comprehensive States

The third category of states has taken a broader view of public sector unionism and tried to decide the proper approach as a matter of overall public policy. These states have more comprehensive legislation, often drawing upon the recommendations of study commissions. At least 18 states have enacted legislation of this sort which is applicable to postsecondary education.

Specification of Scope of Negotiations in Statutes

The legally permissible and desirable scope of negotiations is, of course, a critical issue. The answer depends on the applicable statute and how it is interpreted. A point that is not well understood is that failure to specify limits of negotiability in a statute will encourage public employe labor relations boards and the courts to use the precedents provided by the National Labor Relations Act when, as, and/or if the matter is litigated.

"Good Faith" Bargaining

With certain exceptions that will be discussed later, a collective bargaining statute establishes the obligation of both the employer and employe to engage in "good faith" bargaining. Pennsylvania Act 195, Section 701 reads as follows:

> "Collective bargaining is the performance of the mutual obligation of the public employer and the representative of the public employes to meet at reasonable times and confer in good faith with respect to wages, hours and other terms and conditions of employment, or the negotiation of an agreement on any question arising thereunder and the execution of a written contract incorporating any agreement reached but such obligation does not compel either party to agree to a proposal or require the making of a concession."

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[23] Harold I. Goodwin and John O. Andes. *Collective Bargaining in Higher Education: Contract Content--1972.* Morgantown: Department of Educational Administration, 1973.

[24] Russell A. Smith, "Legal Principles of Public Sector Bargaining," in *Faculty Power*, Terrence Tice (ed.) Ann Arbor: Institute for Continuing Legal Education, 1972. pp. 9-22.

Permissive Statutes

The remainder of this discussion will attempt to describe the parameters of various types of legislation. Some legislation may be characterized as permissive or laissez faire. In other cases, statutes specify certain issues as mandatory subjects of negotiation and exclude other issues from the bargaining process entirely.

Permissive Statutes Re Scope of Negotiations

Perhaps the outstanding example of a permissive or laissez faire statute occurs in Rhode Island. The scope of negotiation in this act includes "hours, salary, working conditions and all other terms and conditions of professional employment." It is the apparent intent of this act to let the bargaining process itself place any limits it wishes on the scope of negotiations.

Mandatory Subjects for Negotiations

A few states, such as Pennsylvania, have made certain items mandatory subjects of negotiations. Section 805 of Pennsylvania Act 195 requires the party to submit items at impasse to a panel of arbitrators whose decisions are final and binding upon both parties, unless they would require legislative enactment to be effective, in which case they shall be considered advisory only. The principle of exclusivity is often a mandatory subject of negotiation. (The reader should see the section in this chapter on impasse resolution for other matters which may be subjects for mandatory negotiations.)

Limitations on Issues Subject to Bargaining

A number of states have placed limits on the issues subject to bargaining. First, a statute, such as the Winton Act in California, may provide only that employer and employes "meet and confer" or that public employes may present proposals only. This language does not authorize collective bargaining or require management to make an agreement or concession. A second limitation on the scope of negotiations which is common in public employe bargaining laws is a statutory management functions or management rights clause.[25] A management rights clause is included in Article 7, Section 702 of Pennsylvania Act 195.

Management Rights Clause

> "Public employers shall not be required to bargain over matters of inherent managerial policy, which shall include but shall not be limited to such areas of discretion or policy as the functions and programs of the public employer, standards of services, its overall budget, utilization of technology, the organizational structure and selection and direction of personnel. Public employers, however, shall be required to meet and discuss on policy matters affecting wages, hours and terms and conditions of employment as well as the impact thereon upon request by public employe representatives."

"Conflicting Statutes"

A third limitation which is placed on the negotiability of certain items is contained in conflicting statutes and/or subsequent court interpretations as to the definition of terms and conditions of employment. Some statutes prohibit agreements if the implementation of the agreement would be in violation of, inconsistent with or in conflict with any legislative statutes, home rule charters and/or civil service regulations and rules. A determination must be made, either in the statute or by subsequent judicial ruling, on the extent to which bargainers are free to negotiate to finality on matters covered by pre-existing legislation. Some state laws provide for state-administered pension plans. Some municipalities have established pension and/or civil service systems. Pennsylvania's Act 195, Section 703 reads as follows:

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[25] See Joyce M. Najita. *Guide to Statutory Provision in Public Sector Collective Bargaining: Scope of Negotiations.* Honolulu: Industrial Relation Center, University of Hawaii, 1973. pp. 55-56.

"The parties to the collective bargaining process shall not effect or implement a provision in a collective bargaining agreement if the implementation of that provision would be in violation of, or inconsistent with, or in conflict with any statute or statutes enacted by the General Assembly of the Commonwealth of Pennsylvania or the provisions of municipal home rule charters."

"Conditions of Employment"

The courts in some states have interpreted the term "conditions of employment" to restrict severely certain areas of negotiations. In the *Seward Education Association vs. Seward School District* case, decided by the Nebraska Supreme Court in July 1972, the court held as follows:[26]

"Without trying to lay down any specific rule, we would hold that conditions of employment can be interpreted to include only those matters directly affecting the teacher's welfare. Without attempting in any way to be specific, or to limit the foregoing, we would consider the following to be exclusively within the management prerogative: The right to hire; to maintain order and efficiency; to schedule work; to control transfers and assignments; to determine what extracurricular activities may be supported or sponsored; and to determine the curriculum, class size, and types of specialists to be employed."

Bargaining Procedures

Conduct of Negotiations

Legislation regarding collective bargaining seldom includes much that is prescriptive concerning conduct of actual negotiations. The law typically allows for such negotiations if invoked by an appropriate party, requires they take place if all prerequisites have been met by the petitioner, insists they should be conducted "in good faith" and calls for each party to be endowed with "authority to bargain" so that the relationship can be meaningful.

Any provision for unfair labor practices may include some reference to basic conduct at the table, usually expressed in general or even vague terms. Laws are typically silent regarding general timetables for negotiations, frequency of meetings, length of such sessions or their conduct.

Uniqueness of Each Set of Negotiations

The inherent assumption seems to be that each set of negotiations inclines to be unique, taking its individual form from the special set of circumstances of the specific moment at the particular place, modified by the volatile chemistry of the converging personalities who represent the two interests that meet at the bargaining table. Similarly the administrative rules and regulations which emerge from the governmental agency responsible for the implementation of law seldom invade the sanctity and privacy of the bargaining room so long as negotiations seem to be proceeding productively.

Mechanisms for Impasse Resolution

Legislation does, however, consistently provide for some mechanisms for impasse resolution, presumably in the public interest. Insofar as the provisions of law specify the limits on the scope of bargaining, this is, of course, a direct influence in a very real sense on the conduct of negotiations.

Statutory Non-interference In Bargaining Procedures

Generally speaking, as far as legislation is concerned, the posture towards the actual process of negotiations can best be described as either laissez faire, or conscious and deliberate "statutory neglect," seeking to offer the greatest

[26] *Seward Education Association vs. Seward School District* 188 Neb. 772, 784, 199 N.W. 2nd 752 (1972) p. 784.

reasonable latitude possible, respectful of the potentially unique nature of each set of negotiations, restricting any intrusion on bargaining procedures to only those matters vitally necessary to the public welfare and to those items which are deemed universally contributory to the effective pursuit of the process.

Relation of Negotiations to Postsecondary Budget Deadlines

Some spokesmen for postsecondary education have offered a serious proposal regarding legislative provision for bargaining which may have merit. They suggest that, since postsecondary educational institutions must submit and defend budget projections well in advance of any given fiscal year and since salaries and fringe benefit costs consume an inordinately high percentage of these budgets, it might well be required that negotiations begin at a date sufficiently in advance of budget submission deadlines. This procedure would allow for a reasonable completion of agreement on such matters. Or perhaps timetables should be established for the declaration of impasse and for the accomplishment of impasse resolution processes to provide some hope, again, that budget submissions deadlines can be met in a realistic and practical fashion. This issue may be extremely worthy of serious consideration.

Interface With Other Laws

Relation of Collective Bargaining Legislation to Other Legislation

Possible Conflicts

A critically important matter, which is clearly related to both the scope of bargaining and conduct of negotiations yet is distinctive from either, is the question of what recognition of and provision for the possibility or probability that collective bargaining legislation and especially its implementation will come into either collision or abrasion with existing legislation, enacted prior to and without anticipation of collective bargaining, will occur in the collective bargaining legislation itself. In respect to postsecondary education two examples of such a possibility come readily to mind.

Vested Authority of Governing Boards

First, what note will be taken of rights, duties, prerogatives, perquisites, responsibilities and privileges that may have been vested in a board of trustees which, in part, may now be subject to the collective bargaining process? Boards of trustees may, in the past, have been willing theoretically and on their own volition to delegate some of these to faculty, but now, faced with the entirely different prospect of a bargaining relationship with faculty, may stand on ceremony and insist on the preservation of such powers.

Agency Shop vs. Tenure

Second, should the legislation include the possibility of agency shop as a legitimate outcome to collective bargaining? If dismissal occurs as a consequence of the failure of an individual to meet the obligations of agency shop, how does this square with the concept inherent in most tenure provisions that dismissal should occur only for "just cause" related to professional competence or conduct and only after judicious due process?

Resolution of Statutory Conflicts

These are, of course, but examples. The body of legislation in each state affecting postsecondary education will prescribe the parameters of such potential confusion.

There are only two ways in which such matters can be formally resolved. Either the collective bargaining act will include a clear indication of the priorities of law as perceived by the legislature or it will not. Should it not, such matters will be adjudicated by the courts, subject to the time-consuming and expensive processes of legal contest and appeal. The lengthy existence of such controversy may cast a formidable shadow over the effectiveness of negotiations in many respects.

It should be noted, however, that even if the legislature should prescribe its intended priorities of collective bargaining legislation and do so in all perceivable prospects and possibilities, this prescription of priorities may, either in whole or in part, be challenged in law as unconstitutional or illegal. The question is, nonetheless, inescapable.

Impasse Resolution

1. *Impasse*

Impasse Objective: Agreement

The objective of the collective bargaining process is to reach agreement on the subjects of bargaining, generally encompassing wages, hours and terms and conditions of employment. Given the adversary nature of the collective bargaining process, it is not uncommon or unusual for the parties to fail to reach agreement on all issues. When a deadlock or stalemate occurs after good faith negotiations, an impasse is said to exist. An impasse has been described as "that point in the negotiations at which either party has determined that no further progress in reaching agreement can be made."[27]

Deadlock

Determining When an Impasse Exists

In the absence of a statutory definition, the determination of whether an impasse exists is a matter of judgment.

> "The bargaining history, the good faith of the parties in negotiations, the length of the negotiations, the importance of the issue or issues as to which there is disagreement, the contemporaneous understanding of the parties as to the state of negotiations, are all relevant factors to be considered in deciding whether an impasse in bargaining existed."[28]

Options for Determining an Impasse

Present laws vary considerably and several options are available to states considering new legislation. For instance, it may be possible to provide that:

a. An impasse may be declared by either party, and impasse resolution procedures be invoked.

b. The administrative board or state agency may make a determination that an impasse exists, either on its own motion or at the request of either party.

c. An impasse may be deemed to occur if agreement is not reached in accordance with some time schedule, such as after 30 to 60 days of negotiations, or by reference to the budget submission date, such as is done in the New York law which deems an impasse to exist if the parties fail to reach agreement at least 120 days prior to the budget submission date of the public employer.

Provisions for Statutory Recognition of Impasse

Present state laws on public sector collective bargaining usually provide for some recognition of impasse and for mediation and fact-finding procedures as aids to impasse resolution. Some also authorize arbitration, and a few grant a limited right to strike.

2. *Strike*[29]

A major public policy issue facing any state legislature considering

[27] See *Guide to Statutory Provisions in Public Sector Collective Bargaining: Impasse Resolution Procedures.*

[28] See *Roberts' Dictionary of Industrial Relations*, Citing *Taft Broadcasting Co.*, 163 N.L.R.B. 475, 478 (1967).

[29] "Strike—A temporary stoppage of work or a concerted withdrawal from work by a group of employees of an establishment or several establishments to express a grievance or to enforce demands affecting wages, hours and/or working conditions. It is a concerted withdrawal of work, since it is the action of a group, and it is a temporary withdrawal, since the employees expect to return to work after the dispute has been resolved. Strikers consider themselves employees of the company with a right to the job once the dispute has been resolved." *Roberts' Dictionary of Industrial Relations*, Page 513.

Right to Strike?

collective bargaining for public employes will be whether to grant the right to strike or to prohibit strikes completely.[30]

Sanctions Against Strikes:

Executive Order

Taft-Hartley Act

N.Y. Taylor Law

The traditional and prevailing pattern is to frown upon strikes by public employes. Under Executive Order No. 11491, which authorizes federal employes to organize for purposes of collective bargaining, strikes by federal employes are prohibited. Striking federal employes are subject to discharge and denial of reemployment by any federal agency for three years under Section 305 of the Taft-Hartley Act.

The New York Taylor Law similarly prohibits public employe strikes and, in addition, it authorizes penalties against both the employes and the union for such violations of the law. Employes may be put on probation for a year, be subject to dismissal or other discipline and lose two days' pay for each day on strike. The union may lose its dues check-off over a period of time as decided by the New York Public Employment Relations Board. Other state laws provide various sanctions against strikes, but the New York Taylor Law is the leading case addressing the questions of the nature of the penalties, the parties to be penalized and the agencies which handle the enforcement. In addition, the board is empowered to consider whether the public employer or its representative is engaged in "such acts of extreme provocation as to detract from the responsibility of the employee organization for the strike."

Arguments for Strike Prohibition:

1. *Sovereignty*
2. *Public Service*
3. *Essential Services*
4. *Implications for the Political Process*

The general intolerance of public employe strikes is based upon at least four primary concerns: (1) the notion that the government is sovereign and that a strike by its civil servants is a form of insurrection; (2) the feeling that government employes are a special category in the labor force and that, having accepted government employment, they have committed themselves to public service, not to be interrupted by dissatisfaction over working conditions; (3) the argument that governmental services are essential, that there are no alternatives readily available to the consumer and that therefore concerted interruptions are not acceptable; (4) the feeling that a strike by government employes is a distorting force in the political process by which decisions regarding the determination of priorities and allocations of public monies are made, as it permits strongly organized groups to benefit at the expense of weaker or unorganized groups of employes and consumers who have an interest in the matters being decided, particularly if they involve the sacrifice or diminution of other programs in order to improve working conditions for a select group.

Trend Toward Strike Authorization

Arguments for Legalized Strikes:

1. *Number of Public Employes*
2. *Illegality No Prevention*

In recent years, however, there has been a notable trend in state legislation which grants public employes the right to strike. At least three factors have influenced such legislation. One is the rapid expansion in the number of public employes and their concomitant political influence. The second is the recognition that the illegal status of a strike does not necessarily prevent strikes. Indeed, the number of public employes strikes has increased, notwithstanding their illegality. A third is the feeling that many of the arguments raised in defense of the strike prohibition do not stand up to

[30]Strikes in rights disputes (disputes over grievance or contract violation issues) are not considered here, nor are strikes over recognition rights. The first type of dispute is increasingly being resolved through final and binding arbitration as provided for in the collective bargaining agreement, as in the private sector, wherein the employes agree not to strike as the quid pro quo for the promise by the employer to submit rights disputes to binding arbitration. The latter type of dispute is being resolved by statutory provisions granting employes the right to organize and bargain collectively.

rational analysis and cannot be justified on the basis of equity and fairness.

3. Equity & Fairness

It is also argued that much of the disfavor with which the public tends to view a strike by government employes is based on a misunderstanding of the effect of a strike. It is pointed out that in the private sector a strike is economically harmful to both parties, but that in the public sector most strikes do not inflict economic injury on the employer and, indeed, in most instances may inflict greater injury on the employe and his dependents and the consumer who must make alternative arrangements for the service interrupted by the strike. Thus, the focus has turned toward granting the right to strike, but limiting it in either or both of two ways: the circumstances of permissibility are limited or the strike is forbidden for occupational groups performing services regarded as essential.

4. Misunderstanding of Strike Effects

Limitation on Right to Strike

Perhaps in recognition of the fact that, even with a limited right to strike, a few yet often critical disputes do not yield to the bargaining process, an increasing number of states have adopted diverse procedural arrangements designed to make the bargaining process work without resort to strike action.

Bargaining Without Strikes

If a state should decide to move in the direction of granting a limited right to strike, what kind of limitations should be considered?

Kinds of Limitations To Be Considered:

a. Should certain conditions be met before a strike is permitted? For instance, should the employes be required to have previously exhausted mediation and fact-finding procedures?

a. Meeting Certain Conditions

b. Are there certain circumstances under which a strike should not be permitted? For instance, endangerment to health and safety.

b. Public Health & Safety

c. Are there certain kinds of employes who should not be permitted to strike? For instance, police, firemen and hospital personnel.

c. Certain Employes Prohibited to Strike

d. Should strike authorization votes by union membership be conducted by secret ballot to minimize emotional appeals and group pressure?

d. Secret Ballots

To what extent should answers to the foregoing questions be found in the state law, and to what extent should the questions be decided by the courts or a state agency? Five states which have granted a limited right to strike have addressed some of these issues.

States Addressing These Issues:

In Montana, the right to strike is found in the nurses' law, which permits strikes if another health-care facility within 150 miles is operational. The employes or employe organization must submit a 30-day written strike notice.

Montana

Vermont prohibits strikes by state employes, but municipal employes may strike or recognize a picket line if it does not endanger the health, safety or welfare of the public.

Vermont

In Pennsylvania, certain categories of personnel may not strike. These include guards at mental hospitals or prisons and personnel necessary to the functioning of the courts. Additionally, police and firemen are covered by a law which provides for compulsory arbitration as a resolution to matters at impasse. For other personnel, strikes are permitted if mediation and fact-finding procedures have been utilized and exhausted. However, in cases where a strike creates a clear and present danger or threat to the health, safety or welfare of the public, the public employer shall initiate a court action for equitable relief, including appropriate injunctions.

Pennsylvania

In Hawaii, the public employes must first resort to the mediation and fact-finding procedures spelled out in the statute, which calls for the fact-finding panel to make public its findings and recommendations. Sixty days thereafter, the employes may strike, provided they also give 10 days' notice of intent to strike to both the employer and the Hawaii Public Employment Relations Board.

Hawaii

In Hawaii, no category of employes is prohibited from striking. However, if the strike, either occurring or about to occur, will endanger the public health or safety, the public employer may petition the Hawaii Public Employment Relations Board to make an investigation. If the board finds that there is imminent or present danger to the health and safety of the public, it shall set requirements that must be complied with to avoid or remove any such imminent or present danger.

Alaska

Alaska is one of the most recent states to enact a public employment relations act (1972). It permits certain categories of personnel to strike, while prohibiting others. Police, fire protection, jail, prison and other correctional institution employes, designated as class 1 employes, may not strike. Class 2 employes, including public utility, snow removal, sanitation and public school and other educational institution employes, may engage in a strike after mediation, if a majority of employes in the unit vote to strike by secret ballot. A strike may be enjoined if it can be shown to a court that it has begun to threaten the health, safety or welfare of the public. If an impasse continues after the issuance of an injunction, the parties shall submit to arbitration. All other public employes not included in classes 1 and 2 are designated as class 3 employes, and they may strike if a majority of the employes in a collective bargaining unit vote to do so by secret ballot.

3. *Mediation*

Mediation As Resolution of Impasse

Mediation is the most common and most widely accepted of the several procedures utilized for the resolution of impasse, presumably because it involves minimal interference with the bargaining process. Mediation is employed more than any other method in public sector impasse resolution procedures.

Mediator

The mediator is usually an impartial third party or public official who meets with the parties and acts as a catalyst by suggesting possible avenues for resolving the particular issue in dispute. He attempts to find a common basis for agreement, but does not impose any particular solution of his own.

Mediation/ Conciliation

The terms "mediation" and "conciliation" are now used interchangeably, although historically there was a distinction.

> "The distinction between mediation and conciliation is primarily in the nature of the activity of the person who is acting as conciliator or mediator. In conciliation, generally, the person acting as the conciliator merely attempts to bring the parties together and permits them to act by themselves in resolving their problems. In mediation, on the other hand, the involvement of the third party is more active and he, the mediator, attempts to suggest to the parties various proposals and methods for the actual resolution of the problem.
>
> "In neither conciliation nor mediation does the conciliator or mediator make decisions. In his most active role he suggests possible areas for compromise and contributes additional points of view to the situation, but fundamentally, it is the parties who have to resolve the dispute. Where the parties are unwilling to help find a solution, the role of the conciliator or mediator is of relatively little value."[31]

[31] *Roberts' Dictionery of Industrial Relations*, Revised Edition, BNA 1971.

Mediation As First Step in Impasse Resolution

Several states which recently enacted comprehensive statutes for public sector collective bargaining have made mediation the first step in the impasse resolution procedures.

N.Y. Taylor Law

The New York Taylor Law permits the employer and the employe organization to negotiate and provide in a collective bargaining agreement an impasse settlement procedure, including submission of disputes to impartial voluntary arbitration. If such a provision is not part of a contract, either party at impasse may request assistance of the Public Employment Relations Board, or the board may on its own initiative assist the parties. The board appoints the mediator or mediators from a list maintained by the board. The Hawaii law is similar to the New York law in this regard.

Hawaii

Pennsylvania

The Pennsylvania law provides that both parties shall call in the Pennsylvania Bureau of Mediation for mediation services if an agreement is not concluded after a "reasonable period of negotiations," such period to consist of not more than 21 days of negotiations and to be not later than 150 days prior to the budget submission date.

Private Sector

For the private sector, most states and the federal government have established mediation and conciliation services or assigned the mediation function to the state labor relations board, if one exists.

Policy Questions:
Timing
Manner
Procedures
Who Pays for Mediation?

The policy questions to be resolved in the development of proposed new state legislation include the timing of when mediation should be involved; the manner in which the mediation procedure is to be conducted, as well as the selection of the mediator; and whether or not it would be appropriate to provide procedures for mediation and conciliation distinct from whatever may exist for the private sector. The question of who should pay for the costs of mediation—the parties, the state agency responsible for the administration of the law or some other arrangement—would also merit consideration.

4. *Fact-Finding*

Fact-finding

In contrast to the private sector, where fact-finding is limited primarily to emergency labor disputes under the Railway Labor Act, legislation and practice in the public sector incline to rely heavily on this technique in the resolution of impasses. Fact-finding differs from mediation in that the fact-finding panel (often a board of three or five persons) takes a more active role than the mediator(s).

Fact-finding Panel

Functions

If an impasse is not otherwise resolved, the fact-finding panel reviews the positions of labor and management, with a view to focusing attention on the major issues in dispute and resolving differences as to facts. The parties have the prime responsibility for presenting data, but the fact-finding panel usually reserves the right to develop such supplementary information as it deems proper in order to make its report or recommendations.

Role of Panel In Private Sector:
Should It Make Recommendations?

In the private sector, a difference of opinion still exists on the question of whether the fact-finding panel should merely report its determination of the facts, or whether it should also make a recommendation on the basis of the facts presented to it. Objections have been raised against the making of recommendations because a recommendation does tend to exert pressure on the parties. In some jurisdictions, the power to make recommendations has been eliminated.

Recommendation In Public Sector Laws

In the public sector, however, the states which have enacted comprehensive collective bargaining laws have tended to favor fact-finding with recommendations. Such is the situation in New York, Pennsylvania, Kansas, Hawaii,

Vermont and Wisconsin. In Vermont and Wisconsin, the fact-finding panels are also authorized to endeavor to mediate the dispute prior to the issuance of the recommendations.

State Practices on Panel Appointment

All of these states, except Vermont, provide for the appointment of the fact-finder or fact-finding panel, usually three persons, by the employment relations board or commission. In the case of Vermont, each party is to select a member to the fact-finding panel, and the two members, within 10 days of their selection, are to select a third. If the two members are unable to agree, the chief justice of the Vermont Supreme Court shall appoint the third member. The Vermont model seems to adopt the procedures sometimes followed in the selection of arbitrators in public sector interest disputes, in which a tripartite panel of arbitrators is usually selected, one by each party and the third by the other two.

5. *Arbitration*

Arbitrator

Arbitration is a procedure by which the parties who are unable to agree on a solution to a problem indicate their willingness to be bound by the decision of a third party, the arbitrator. The parties usually agree, in advance, on the issues which the arbitrator is to decide, and the arbitrator's decision is limited by the scope of agreement, or submission. In collective bargaining, a distinction is made between grievance arbitration and interest arbitration.

Grievance Arbitration

Grievance arbitration is usually provided for in most collective bargaining agreements, in which arbitration is the final step in the grievance procedure. The arbitrator is generally limited to the interpretation and application of the agreement, and he is required not to add to or amend the contract in his award. Grievance arbitration is sometimes referred to as justiciable arbitration, or as rights arbitration, since the arbitrator acts in a quasi-judicial capacity and determines the rights of the parties under the terms or specifications of the particular contract.

Problems in Postsecondary Education

Grievance arbitration is well established in traditional industrial relations. With respect to postsecondary education, however, a serious question has been raised with respect to the extent to which matters of professional or academic judgment should be turned over to a third party outside the academy for final and binding decision.

Interest Arbitration

Interest arbitration, that is arbitration as an element in the bargaining process itself, is still a matter of debate because it involves the determination of the provisions which should go into a new contract under negotiation. Disputes involving the determination of new contract provisions are sometimes referred to as nonjusticiable disputes. Interest arbitration could be treated either as voluntary arbitration or compulsory arbitration.

Several state laws authorize the parties to submit their negotiating disputes to interest arbitration, and since the parties are not legally required to do so, there is little controversy. On the other hand, any proposed legislation which should call for *compulsory* interest arbitration is likely to engender debate.

Objections to Compulsory Arbitration

Arguments have been advanced against compulsory arbitration on both theoretical and practical grounds. The principal objections have been that compulsory arbitration takes away the right of the parties to reach their own agreement on a voluntary basis and has a chilling effect on the bargaining process.

Arguments for Compulsory Arbitration

On the other hand, strong arguments have been advanced in favor of "legislated" arbitration (as a less onerous term than "compulsory") on the grounds that compliance with the law to resolve interest disputes by arbitration

is no more compulsory than obeying any other kind of law, whether it involves workmen's compensation, the payment of taxes or vehicular traffic. An excellent analysis in favor of legislated arbitration has been presented by the chairman of the Michigan Employment Relations Commission.[32]

> "Collective bargaining was born of warfare and remains, in theory, a struggle for power between two equal giants who stalemate each other into equity. It is trial by battle, with the threats of strike and lockout as the persuasive weapons.
>
> "It is time to question whether continued determination of working conditions by trial by battle is in the public interest for the last quarter of the 20th century. It is now time to examine judicial processes for resolving collective bargaining disputes as we resolve every other domestic, economic and human relationship in our nation, and to urge the logic of extending those processes to the determination of working conditions.
>
> "The two basic arguments in favor of legislated arbitration are listed by the late Professor Harold S. Roberts: (1) it protects the paramount needs of the public; and (2) it substitutes judicial procedures for jungle warfare. Arguments against legislated arbitration are: (1) it is an unconstitutional delegation of legislated power; (2) it damages collective bargaining; (3) it is not effective (or will not work) because there is no practical way to enforce compliance; and (4) it may result in administered wages."

Policy Issue

The major public policy issue would be to decide whether compulsory or legislated interest arbitration should be provided as a procedure for resolving an impasse in negotiations, possibly as an alternative to strike, particularly in disputes involving policemen and fire fighters.

Options in Alaska

The state of Alaska, has recently provided a comprehensive set of options:

a. For "class 1 employes" (police, fire protection, jail, prison and other correctional institution and hospital employes) who may not strike, the parties are required to submit to interest arbitration.

b. For "class 2 employes" (public utility, snow removal, sanitation and public school and other educational institution employes) who may strike until judicially enjoined because of a threat to the health, safety or welfare of the public, the parties are required to submit to arbitration if the impasse exists after the issuance of the injunction.

c. No provision is made for compulsory arbitration for "class 3 employes," defined as other public employes not included in class 1 and class 2 and who are authorized to strike.

Problems for Postsecondary Education

With respect to postsecondary education, a question may legitimately be raised as to whether the issues over which impasse may exist are such as to lend themselves to interest arbitration for determination, particularly by a third party who may not be adequately acquainted with the complexities and culture of higher education. This problem, of course, stems most directly from and is influenced mainly by the scope of negotiations authorized under the law.

[32] Robert G. Howlett, "Contract Negotiation Arbitration in the Public Sector," *University of Cincinnati Law Review*, Vol. 42, No. 1, 1973.

Should the Arbitrator Mediate Voluntary Arbitration

Mandated Interest Arbitration

Steps in Mediation-Arbitration

Leverage

Dependence on Skill

Limitations In Maine

Final-Offer-Selection Arbitration

Arbitrator Selects Most Reasonable Package

Problems With Statutory Adoption

6. *Mediation-Arbitration*

A question integral to the arbitration process which has received attention has to do with whether an arbitrator should attempt to mediate disputes. In voluntary arbitration, this question could be determined by the parties.

As to "mandated interest arbitration in the public sector the arbitrators have a public responsibility. The public interest may call for an attempt to mediate, although this too depends on an arbitrator's qualifications and the presence or absence of a state mediation service."[33]

In California, a well-known labor arbitrator has experimented with and in effect institutionalized mediation-arbitration, abbreviated as "med-arb," in some rather substantial contract negotiation disputes and gained acceptance for the process in California and Hawaii. The person chosen by the parties serves as both mediator and arbitrator. He begins by attempting to mediate as many issues as possible. If the point is reached when he judges that his mediative efforts will no longer yield voluntary agreement, he assumes the role of arbitrator and decides the remaining issues.

The mediator-arbitrator has the advantage of the leverage he can exert during the mediation phase and the knowledge already acquired when he goes into the arbitration phase. On the other hand, it would seem that "med-arb" can work effectively only for persons of extraordinary skill, who are competent to handle both of these aspects of impasse resolution, since mediation and arbitration call for the exercise of different skills and for persons in whose fairness and judgment both parties have complete confidence.

The state of Maine has recognized the difference in functions and qualifications by providing that a person who has served as mediator may not, without the consent of both parties, serve as either fact-finder or arbitrator. It is to be noted that no law prescribes "med-arb" as the statutory method, and where it has been employed, parties entered the arrangement voluntarily.

7. *Final-Offer-Selection*

A particular form of "legislated" arbitration is the "final-offer-selection" arbitration process, the subject of experimentation in Wisconsin and Michigan for policemen and fire fighters. Under this procedure, the arbitrator is required to choose between the final offer of the employer and the final offer of the union, making his choice on the basis of a judgment as to which "package," *viewed as an entity*, is more reasonable. It is to be noted that both laws ar regarded as experimental; the Wisconsin law was effective for the period April 21, 1972, until it was repealed on July 19, 1973, and the Michigan law is scheduled to expire on June 30, 1975. Three problems have been identified with respect to statutory adoption of final-offer-selection:

> "First, final-offer-selection assumes that the parties are sophisticated enough to evaluate their positions realistically against the standards which arbitrators are likely to use in making their choices. If this assumption is not sound, the procedure is not likely to have significant motivational impact at the bargaining table because the parties will not have enough experience to be apprehensive.
>
> "Second, the parties, particularly employee organizations, will be discouraged from making or keeping on the table ideologically-

[33] Robert G. Howlett, *University of Cincinnati Law Review*, Vol. 42, No. 1, 1973.

motivated proposals which they know they cannot achieve but which it is important for them to make for political reasons. This may contribute to more rational bargaining, but at the cost of employee frustration and possible rejection of the settlement.

"Finally, final-offer-selection is not well adapted to the typical situation in which the parties have bargained on a package basis and a multiplicity of issues, both economic and noneconomic, remain unresolved. There is a real possibility in such a case that the arbitrator will be unable to rationalize his choice between the two packages in such a way as to make his award acceptable, that he will, in fact, adopt only those proposals which are most familiar and concerning which he feels competent to make a judgment. If this should occur the scope of bargaining will, as a practical matter, be circumscribed by the ability or willingness of the final-offer-selector to deal with problems on their merits. Thus, the process may result in avoiding many problems rather than solving them."[34]

8. *Agency Adjudication*

Court of Industrial Relations (Nebraska)

Decisions Binding

The state of Nebraska has pioneered with legislation which vests final decision in a state agency called the Court of Industrial Relations. This court is empowered to establish wage rates, terms and conditions of employment and fringe benefits, notwithstanding any agreement reached by the parties through negotiations. The decisions of the court are binding on all parties involved and are deemed to be of the same force and effect as like orders entered by a district court of the state. Significantly, the parties are not required to bargain to impasse and the court may establish wage rates and terms and conditions of employment even in the face of a collective bargaining agreement agreed to by the parties. As a consequence, some public employers view negotiations as a waste of time, effort and money and simply refuse to negotiate at all. Agency adjudication statutes of this type may very well hinder rather than promote collective bargaining.[35]

The following materials, among others, have been utilized as basic resources in the preparation of this section on impasse resolution, in addition to references specifically cited, and may be of general interest.

Harry T. Edwards, *Current Developments in Labor Relations Law in the Public Sector*, paper presented at Midwest Labor Conference, Ohio Legal Center Institute, 1972.

Helene S. Tanimoto, Industrial Relations Center, University of Hawaii, *Guide to Statutory Provisions in Public Sector Collective Bargaining: Impasse Resolution Procedures.*

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[34] *Report and Proposed Statute of the California Assembly Advisory Council on Public Employee Relations*, March 15, 1973, Benjamin Aaron, Chairman, pp. 226-227.

[35] An excellent discussion by Dean Wallace E. Good appears in Volume 2, *Journal of Law and Education*, p. 253 (April 1973) entitled "Public Employee Impasse Resolution by Judicial Order: The Nebraska Court of Industrial Relations."

Prohibited Practices

1. *General*

Prohibited Practices

Rights of Employes vs. Rights of Employers

Prohibited practices, also referred to as unfair labor practices, are fundamentally statutory in origin. They consist of those actions of employers, employes or unions that are prohibited under federal or state labor relations statutes. In establishing the original National Labor Relations Act (the Wagner Act), the Congress vested certain rights in employes to act in concert, to organize, to elect representatives and to bargain collectively. The violation or frustration of these rights by the employer was declared to be an unfair labor practice.

Rights of Employes vs. Union

Since the original purpose of the legislation was to give certain rights to employes, unfair labor practices by employers received major attention in the earlier case law. Subsequently, however, the right of the employes to be free from coercion or discrimination from their fellow employes or their unions was given more recognition. The Taft-Hartley Act amendments created six union unfair labor practices.

Obligations of Bargaining Parties

The rights of the employer, employe and union being set forth in a statute, a concomitant obligation (i.e. prohibition) is placed on each of the parties not to impinge on the rights of any of the other parties. The statutory prohibitions are intended to restrict conduct which could, if unrestrained, frustrate the collective bargaining process itself.

2. *Types of Prohibited Practices*

Principal Unfair Labor Practices

This section describes the principal unfair labor practices covered by the National Labor Relations Act (N.L.R.A.) and indicates the extent to which state and local legislation may have comparable and/or other provisions, because on this subject, the N.L.R.A. and the interpretations of the National Labor Relations Board (N.L.R.B.) have played an influential role in state legislation and state practices, in both the private and public sectors.

The proscription of the N.L.R.A. regarding prohibited practices is divided basically into two parts, those practices which the employer is prohibited from engaging in and the prohibitions directed toward the employe or employe organization, referred to as union unfair labor practices.

a. Employer Unfair Labor Practices

a. *Employer Unfair Labor Practices.* The N.L.R.A. defines certain acts which are generally categorized as unfair labor practices when engaged in by an employer or his agent. The employer unfair labor practices are ordinarily referred to as: (1) interference, restraint and coercion; (2) domination of labor unions; (3) encouragement or discouragement of membership in labor unions by discrimination in hire or in tenure, terms or conditions of employment; (4) discrimination against employes for filing charges or giving testimony under the N.L.R.A.; (5) refusal to bargain; and (6) execution of hot-cargo agreements with unions (not a factor in state legislation governing public employes).

1. Interference, Restraint, Coercion

(1) *Interference, Restraint, Coercion.* The N.L.R.A. provides that it is an unfair labor practice for an employer to interfere with, restrain or coerce employes in the exercise of the rights granted under the law. Concrete acts which fall within the category of "interference" are threats, espionage, blacklisting, promises of benefit to employes who will resist unionization, "runaway shops," and, in general, all activities designed to obstruct, thwart or interfere with free organizational activities by employes.

(2) *Domination or Support of Unions.* The N.L.R.A. makes it an unfair labor practice for an employer to dominate or interfere with the formation or administration of any labor organization or to contribute financial or other support to it. The section contains a proviso, however, permitting individual conferences between employers and employes without loss of time or pay. A violation of the law exists whenever an employer contributes support of any kind to a union.

2. Domination/ Support of Unions

(3) *Encouragement or Discouragement of Unionization by Discrimination.* The N.L.R.A. declares it an unfair practice for an employer to encourage or discourage membership in any labor organization by means of discrimination in hire or in tenure, terms or conditions of employment.

3. Unionization By Discrimination

(4) *Discrimination for Filing Charges or Giving Testimony.* The N.L.R.A. makes it an unfair labor practice for an employer to discharge or otherwise discriminate against an employe because he has filed charges of unfair labor practices or given testimony under the act.

4. Discrimination For Charging or Testifying

(5) *Refusal to Bargain.* The act declares it an unfair labor practice for an employer to refuse to bargain collectively with the duly authorized representative of a majority of the employes in the appropriate bargaining unit. This means that once the duly authorized union has requested bargaining on an appropriate subject of collective bargaining, the employer must confer with the union representatives. However, only bargaining in "good faith" is required; the employer is not required to agree to anything.

5. Refusal to Bargain

b. *Union Unfair Labor Practices.* The National Labor Relations Act prohibits interference with the employe rights stated in the law not only by employers but also by unions. The law grants employes the right not only to engage in concerted activities, but also to refuse to engage in such activities. Not all the union unfair practices are designed to protect employe rights; some presuppose the existence of employer or public rights.

b. Union Unfair Practices

The union unfair labor practices may be referred to as: (1) restraint or coercion of employes or employers: (2) coercion of discrimination; (3) refusal to bargain; (4) strikes and boycotts for certain purposes; (5) excessive or discriminatory initiation fees; (6) featherbedding, or exactions for work not performed; (7) organization or recognition picketing; and (8) execution of hot-cargo agreements with employers. The last three appear not to have been of substantial concern in public sector situations.

(1) *Restraint or Coercion of Employes or Employers.* The N.L.R.A. provides that it is an unfair labor practice for a labor organization or its agents to restrain or coerce either employes in the exercise of the rights guaranteed in Section 7 or employers in the selection of representatives for the purposes of collective bargaining or adjustment of grievances. In practice, the scope of this prohibition has proved much narrower than the equivalent restraint upon employers. The N.L.R.B. has held these proscriptions are limited to situations involving actual or threatened economic reprisals and physical violence by unions in an effort to compel union membership or strike support.

1. Restraint or Coercion of Employes or Employers

(2) *Coercion of Discrimination.* The law provides that a union may not cause or attempt to cause an employer to discriminate against an employe. It also provides that unions may ask employers to discharge employes pursuant to union-shop agreements only when the employes have failed to tender the periodic dues and the initiation fees required as a condition of acquiring or retaining membership.

2. Discrimination

(3) *Refusal to Bargain.* The N.L.R.A. now declares that it shall be an unfair labor practice for a union to refuse to bargain collectively with an employer

3. Refusal To Bargain

where the union is the bargaining representative of the employes in the appropriate bargaining unit. This places upon unions an obligation borne only by employers under the original act.

4. Strikes & Boycotts

(4) *Strikes and Boycotts for Certain Purposes.* The N.L.R.A. prohibits "secondary boycotts" in virtually all situations, with the possible exception of the situation in which a boycotting union is seeking to make an employer fulfill his obligation to recognize a union that has been certified by the N.L.R.B. It prohibits all strikes designed to make a self-employed person join a labor organization or to make an employer join an employer organization. It outlaws all strikes designed to make an employer recognize one union despite board certification of another, and it prohibits jurisdictional strikes.

5. Excessive or Discriminatory Fees

(5) *Excessive or Discriminatory Initiation Fees.* The N.L.R.A. provides that where a union has a compulsory-unionism (union shop) agreement which is permitted by the law, the union may not require of employes "the payment, as a condition precedent to becoming a member of such organization, of a fee in an amount which the board finds excessive or discriminatory under all the circumstances."

c. State and Local Statutes on Unfair Labor Practices:

c. *State and Local Statutes**. The principal unfair labor practices provided in the N.L.R.A. are reflected in many state and local statutes. Most of these statutes prohibit certain practices by both employer and union. Some few state laws, however, contain employer unfair labor practice provisions but do not contain union unfair labor practices.

1. State Employer Unfair Practices

(1) *Employer Unfair Labor Practices Under State Statutes.* In the case of employers, the unfair labor practices most frequently included in statutes are the following: (a) interfering with, restraining or coercing an employe in the exercise of his granted rights (30 statutes); (b) refusing to meet and confer in good faith or to bargain collectively in good faith (30 statutes); (c) dominating, interfering with or assisting the formation or administration of an employe organization (28 statutes); (d) discriminating in some manner—in hiring, tenure, terms of employment, etc.—in order to encourage or discourage union membership (26 statutes); (e) discharging or discriminating against an employe for bringing a charge, signing a petition, giving testimony or for joining a union (19 statutes); (f) violating representation election procedures or rules and regulations or both (8 statutes); (g) refusing to participate in good faith in negotiations, fact-finding, arbitration or impasse settlement (7 statutes). It is to be noted that the first five unfair labor practices listed above are also embodied in the National Labor Relations Act.

Violation of Terms of Agreement

Five statutes—Hawaii, Nevada, Massachusetts (state employes) and two Wisconsin laws—include violation of the terms of an agreement as an unfair labor practice for employers or employes or employe organizations. From that point on, the employer unfair labor practices are more specific and range from forbidding a blacklist or a lockout to forbidding spying on employes.

Variation in Number of Employer Unfair Practices

The number of employer unfair labor practices listed in each statute varies from one, as set forth in both the Nebraska state and local government employes' law and the Oregon state and local government employes' law, to 10 each for the Minnesota comprehensive law, the Rhode Island municipal employes' law and the Rhode Island teachers' law. There are approximately 23 different kinds of employer unfair labor practices cited in the 32 statutes which contain employer unfair labor practice provisions.

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*The term statutes includes state laws, municipal ordinances and agency rules and regulations.

(2) *Union Unfair Labor Practices Under State Statutes.* In the case of employe and union unfair labor practices, the unfair labor practices most frequently included in statutes are the following: (a) refusing to meet and confer in good faith or to bargain collectively in good faith (27 statutes); (b) interfering with, restraining or coercing an employe in the exercise of his granted rights (23 statutes); (c) engaging in a strike, work stoppage, work slowdown, boycott or picketing (sometimes these restrictions are listed separately; sometimes they are listed in combination) (22 statutes); (d) interfering in the employer's selection of a representative for bargaining or for grievance adjustment purposes (12 statutes); (e) violating representation election procedures or rules and regulations or both (8 statutes); (f) coercing or inducing employes to refuse to handle or transport goods or to perform services (employe and union unfair labor practices dealing with this subject are often stated in a variety of specific terms) (7 statutes).

2. State Union Unfair Practices

From that point on, as with the employer unfair labor practices, the employe and union unfair labor practices are more specific and range from forbidding specific acts during labor disputes to inducing a supervisory employe to join or to act in concert with a particular employe organization, to punishing or penalizing members in particular ways or for particular acts. There appears to be less conformity with the National Labor Relations Act here than was found in the area of employer unfair labor practices.

The number of employe and union unfair labor practices listed in each statute varies from one, as set forth in the Nebraska state and local government employes' law and the Oregon nurses' law, to nine as set forth in the Vermont state employes' law. There are approximately 30 different kinds of employe and union unfair labor practices cited in the 29 statutes which contain employe and union unfair labor practices provisions.

Variance in Number of Union Unfair Practices

Although it is generally supported that certain unfair labor practices by public employers and unions should be prohibited by statute, there is diversity of opinion on which specific practices should be prohibited. In addition, it is not at all clear whether the statement of unfair labor practices should be framed in general terms or consist of a specific list of proscribed acts. Probably the most controversial of employer practices designated as unfair is the refusal to bargain in good faith. Noting the trend in the private sector to extend gradually the duty to bargain to encompass a wide range of managerial decisions affecting employes of an enterprise, public employers, concerned that the duty to bargain may erode their decision-making authority, have urged the adoption of management rights provisions limiting the scope of negotiations or excluding certain subjects from the bargaining process.

Diversity in Specific Prohibited Practices

Management Rights Provisions

3. *Procedures for Prevention of Prohibited Practices*

Under the N.L.R.A., charges of unfair labor practices are adjudicated by the N.L.R.B. If violations are found, cease and desist orders are issued, and the orders are enforceable in the federal courts.

3. Prevention of Unfair Practices

Procedures for investigating, hearing and deciding these cases are not set forth in the N.L.R.A. but have been devised and promulgated by the board in its rules and regulations. Where acts complained of may consist of both a contract violation and an unfair practice, the board has adopted a policy of deferral to the grievance procedure set forth in the collective bargaining agreement, except where it can be shown that resort to the contract grievance procedure would be futile. The board also has discretionary jurisdiction to review the settlement or the arbitration award for the purpose of determining

N.L.R.B. Rules & Regulations

whether the award is repugnant to the purposes of the law.

State Laws

A number of state employment relations laws follow the N.L.R.A. pattern and vest the administration of the laws, including adjudication of unfair labor practice charges, in the agency established by the law.

4. *Sanctions*

Sanctions

An unfair labor practice is a statutory "wrong." It is not a crime, and the commission of an unfair labor practice does not result in fine or imprisonment. The sanction consists of an order to cease and desist issued by the administrative agency. However, a judicial injunction to compel obedience to the order could ensue and violation of the injunction could result in fine or imprisonment or both.

Resource Materials

The following materials, among others, have been utilized as basic resources in the preparation of this section on prohibited practices, in addition to references specifically cited, and may be of general interest.

Commerce Clearing House Labor Law Reports.

Report and Proposed Statute of the California Assembly Advisory Council on Public Employee Relations, March 15, 1973, Benjamin Aaron, Chairman.

Contract Administration and Enforcement

Contract Administration & Enforcement

If collective bargaining for public employes in higher education is authorized, it may be assumed that some collective bargaining agreements will result therefrom. However, the execution of a collective bargaining agreement does not terminate the duty to bargain regarding grievances over the application of that agreement or subjects which were neither discussed in previous negotiations nor embodied in the terms or conditions of the contract. Whereas continued negotiations on other terms and conditions of employment must be left to the parties, the resolution of contract grievances may require additional legislation.

1. *Grievance Resolution*

Resolution of Grievances

The resolution of grievances is generally covered by a detailed grievance and arbitration procedure in collective bargaining agreements. Official state action is usually not included in the grievance resolution process. Rather, third party arbitrators selected from lists prepared by the Federal Mediation and Conciliation Service or the American Arbitration Association are widely utilized. However, many existing state statutes incorporate tenure rights for employes in the field of postsecondary education along with detailed grievance procedures. Similar rights may be incorporated into collective bargaining agreements, and those agreements may provide for separate and distinct grievance and arbitration procedures. Accordingly, existing state statutes should be carefully reviewed to determine whether or not changes are necessary in order to accommodate the resolution of grievances flowing from collective bargaining agreements which may result from the authorization to public employers to bargain collectively with public employe labor organizations.

Tenure Rights in Grievance Procedures in Statutes

vs. Tenure Rights in Agreements

Perhaps the most important policy decision that needs to be made regarding the resolution of grievances stemming from collective bargaining agreements involves designation of the final employer decision-making level

before recourse to independent third-party arbitration. Most public employers in the field of higher education receive authority from either the state constitution or state statutes. It may be assumed that this authority generally encompasses the power to resolve employe grievances. It would, therefore, be expected that the governing board of such institution would be selected as the final level of decision making in the grievance process prior to arbitration.

Final Level of Employer Decision Making in Grievance Resolution Before Third Party Arbitration

However, some states have developed a detailed state personnel act with a specified grievance procedure for all state employes. If it is the intent of the state to rely upon the state personnel office as the final level of decision making in the grievance procedure prior to arbitration, some mention of this fact should be made in the statute authorizing the signing of collective bargaining agreements. The state personnel act in question may also utilize a grievance procedure only and not allow recourse to independent third-party arbitration. Obviously, if arbitration by a third party is to be prohibited, it should be done explicitly in the statute so that the parties at the bargaining table will know how to frame an acceptable grievance procedure.

State Personnel Acts

In some states the institutions of postsecondary education are placed under the governance of a board or boards of regents or trustees established by the state constitution. In those instances, any state personnel system finding its basis of authority in state statutes rather than the state constitution is probably without power to resolve grievances for employes of the constitutionally based institution. As the resolution of grievances will continue to be an important part of the employer-employe relationship, attention must be given to the statutory scheme allowing for the resolution of those grievances at the time enabling legislation is passed.

Constitutional Governing Boards vs. State Personnel Systems

2. *Enforcement of Collective Bargaining Agreements*

Federal statutes allow parties to collective bargaining agreements to seek specific enforcement of those agreements in federal district courts. However, not all states have seen fit to include a similar provision in state statutes authorizing collective bargaining.[36] If state enabling legislation is passed authorizing collective bargaining, and if it may be assumed that some collective bargaining agreements will result therefrom, some attention should be given to enforcement of contractually agreed-to rights in the event either party breaches the collective bargaining agreement.

Enforcement of Contractually-Agreed-to Rights

If the parties do not have a specific statutory cause of action to enforce collective bargaining agreements, much that is done in the field of resolving grievances will be unenforceable. For example, even though the collective bargaining agreement may provide that both parties will agree to submit grievances over the interpretation of contract terms to a neutral third-party arbitrator, neither party can be easily forced to abide by the decision of the arbitrator. Obviously, the parties may file a common law action, if allowed by state statute, seeking enforcement of the contract, but this method cannot be guaranteed to provide either party to the contract with an acceptable remedy. On the other hand, if the parties are allowed a specific statutory cause of action to enforce the contract, arbitrators' decisions may be enforced by the state judicial system along with other terms and conditions of the contract.

Statutory Basis for Enforcement

State Judicial System

Another element of the enforcement of collective bargaining agreements involves the issue of allowing the collective bargaining agreements to stand as a

Bargaining Agreement as Bar to Election

[36] *See* Sullivan, *Public Employee Labor Law* §14.2 (1969).

bar to petitions for additional secret ballot elections, either by rival employe organizations or by employes wishing to decertify a bargaining representative. The National Labor Relations Board has determined by adjudication to allow collective bargaining agreements to serve as a bar to election petitions for up to three years. The decision relating to whether or not collective bargaining agreements should be a bar to election petitions is generally a policy decision best made by the legislature, and the decision should be made at the time the enacting legislation is passed.[37]

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[37] *See generally*, D. H. Wollett and R. H. Chanin, *The Law and Practice of Teacher Negotiations* at 5:1 to 5:18 (1970).

VI. APPROACHES TO FURTHER LEGISLATIVE STUDY

Model Legislation

Model Legislation

State legislators may find of value a short review of model legislation which has been developed to date in terms of omnibus collective bargaining for public employes. In addition, there is the legislation developed in state legislatures mentioned earlier under special labor legislation for postsecondary education.

Two Model Comprehensive Laws (ACIR)

Two model comprehensive labor-management relations acts for public employes were prepared by the United States Advisory Commission on Intergovernmental Relations in 1970, with a revision of the formal mandatory negotiations model in 1971. The commission favored a meet-and-confer approach, but drafted the second model since it felt some states would prefer a different approach. Both models call for the establishment of a public employment relations agency to administer provisions for unit determination, recognition, election and certification of representatives, dues check-offs, prohibited practices and dispute settlement. One could consider these as some of the most cohesive attempts available to handle current problems, apart from the various state statutes themselves. These models can be found in *Faculty Power: Collective Bargaining on the Campus*, Terrence N. Tice, Editor, Institute of Continuing Legal Education, University of Michigan, Ann Arbor, 1972.

National Civil Service League Model

Another model law of interest is that of the National Civil Service League in a November 1970 revision of their 1953 "Model Public Personnel Administration Law." Information concerning that document can be obtained from the National Civil Service League, 1028 Connecticut Ave. N.W., Washington, D.C. 20036.

N.E.A. Model

Still another model act known as a "Professional Negotiations Act for Public Education" was prepared by the Professional Staff Relations Section of the National Education Association in Washington, D.C. This 1969 document was intended for the kindergarten-grade 12 level of education, but contains some valid ideas for legislative reference and drafting offices.

Federal Legislation

There is also U.S. House of Representatives Bill 8677, the Clay-Perkins Bill, which is presently in the Committee on Labor and Education of the House. It was introduced June 14, 1973, and is known as the "National Public Employment Relations Act of 1973." While this legislation probably is far from being finished or perfect, it can be of use in terms of some of the points covered.

Other Sources

Other sources of particular interest are the American Bar Association's "Report of the Committee on State Labor Law," August 1969, reported in *Government Employees Relations Report* No. 31, Aug. 18, 1969; *Colorado Legislative Council Public Employee Negotiations; Legislative Council Report to the Colorado General Assembly*, Denver, 1968; "National Public Employee Relations Act," a draft of a bill drafted by the American Federation of State, County and Municipal Employees and introduced in Congress on April 30, 1970; (see *Government Employees Relations Report*—Reference File 1970 51:201-208); a model act drafted for the state of Florida; "Public Employees Negotiation Act," *Harvard Journal on Legislation*, Volume 6:549-562, May 1969; and "The Legislation Necessary to Effectively Govern Collective Bargaining in Public Higher Education," Thomas R. Wildman, *Wisconsin Law Review*, 1971 (1). pp. 235-295. This entire issue of the *Wisconsin Law Review*

contains a good deal of informative material of value to legislative staff or state executive personnel studying the issue.

Assn. of State & Municipal Employees Models

The Association of State and Municipal Employees also has a number of model legislative drafts on various aspects of public employment. In the field of postsecondary education, Dr. Emerson G. Shuck, president of Eastern Washington College, has done a thorough study and developed a model bill for four-year institutions which is being studied by the Washington state legislature.

Washington State Model

Study Commissions

Recent State Studies of Omnibus Laws

Another procedure followed by a number of the states has been the legislative or executive study commissions. Past commissions or studies have assisted in the development of comprehensive omnibus public employe labor legislation in Pennsylvania during 1968-69, in Hawaii during 1969-70 and Oregon in 1972-73. Maine and West Virginia began studies in the 1970-71 legislature sessions which as yet have not produced omnibus legislation for state employes. A recent interim study was undertaken in Iowa in 1971 by the Board of Regents for educational collective negotiations, and a very extensive study was started in 1972-73 by the California legislature An ongoing study for four-year institutions is under way in the state of Washington.

Current Studies

Current studies are under way by legislative committees or governor's offices in Idaho (omnibus), North Carolina (omnibus), Oklahoma (post-secondary) and Texas (omnibus). An interim committee proposal was rejected by the Maryland legislature in 1972. A new study was recently initiated and is presently being considered as a suitable approach by a number of Colorado legislators. However, no action has as yet been taken in the legislature.

Desirability of Studies

It would appear that with the increasingly complex public employment position of elementary-secondary, postsecondary, police and fire employes, hospital employes and other sections of public employment, that legislative and executive staffs, as well as legislators and governors, could indeed consider the implementation of an in-depth study to develop an all-purpose omnibus public employment bill in those states which lack such legislation, or in those states with fragmented laws which might feel an omnibus public employment act as a needed direction in the public's best interest.

VII. POSTSCRIPT

The advisory committee of the Education Commission of the States charged with the preparation of this publication has developed a three-part appendix for future reference. This first section deals with a simple glossary of public employment collective negotiations terminology to assist the reader who may not be fully familiar with such terminology. The second section deals with a detailed analysis of the current overall postsecondary, omnibus and K-12 specific legislation for public employes, state by state. There also is included an analysis of the recent legislative history of these three types of legislation, state by state, including a history of all statutes for reference.

The final section includes a rather extensive listing of available sources of data and information which relate to postsecondary public collective negotiations legislation, including a bibliography of bibliographies on the subject for further in-depth reading, available resource centers and a short reading list of the most helpful publications that the members of the advisory committee have found of value.

APPENDIX I

A GLOSSARY OF PUBLIC EMPLOYMENT TERMINOLOGY

APPENDIX I

A GLOSSARY OF PUBLIC EMPLOYMENT TERMINOLOGY

Agent, bargaining	That organization recognized as sole and exclusive representative of the bargaining unit determined as deserving of collective bargaining status.
Agency Shop	An arrangement under which an employe within the bargaining unit does not have to become a member of the organization which is the bargaining agent, but does have to pay an appropriate service charge to the bargaining agent in order to maintain employment status.
Arbitration	A procedure whereby parties unable to agree on a solution to a problem indicate their willingness to be bound by the decision of a third party. The parties usually agree, in advance, on the issues which the third party (the arbitrator) is to decide.
Authorization Card	A means by which employes within a prospective unit may indicate their desire to be represented by a particular organization as their bargaining agent. An integral part of the recognition and certification process.
Bargaining Unit, appropriate	That collection of job classifications that are deemed by the proper designating agency to be worthy of inclusion within a single bargaining status. In principle, that collection is the largest number of such classifications which have a demonstrable community of interest.
Board, labor relations	That agency to which is delegated the responsibility for the administration and implementation of applicable collective bargaining law within either state or national government.
Certification	That process through which an employe organization is endowed with status as a sole and exclusive bargaining agent for a designated unit.
Charge, unfair labor practice	The allegation that either an employer or an employe organization has violated one of the proscriptions indicated in the collective bargaining law, either by specification or implication, as being incompatible with the practice of bargaining in good faith.
Checkoff	The practice whereby the employer withholds from the paycheck of an employe and transmits to the union the designated union dues. This requires a written authorization from each individual employe.
Closed Shop	The form of union security which requires that an individual be a member of the union which is the certified bargaining agent prior to eligibility for initial employment. Generally illegal and unapplicable to the public sector.

Collective Bargaining	The process which requires of two parties, the employer and the designated employe collective bargaining agent, that they perform mutual obligations aimed toward the arrival at a written contract. Such obligations include the responsibility to meet at reasonable times and to negotiate in good faith regarding wages, hours and other conditions of employment. Neither party is required to agree to, or to make any particular concession regarding, any individual proposal of the other.
Company Union	A union either so constituted or so conducted as to be subject to employer domination. Generally illegal. The concept is of particular concern in higher education where there is a tradition of joint administrative/faculty/board of trustee decision making.
Consent	The mutually agreeable process through which the employer and the employe organization *may* jointly either delineate the bargaining unit or officially designate a bargaining agent without external intervention.
Consent Election	An election held by a labor board after informal proceedings in which the two parties have mutually agreed on the conditions, provisions and implications of the election.
Contract	The expression in writing of the agreements reached as a result of the collective bargaining process.
Contract Bar	Rules delineating the conditions under which an existing contract inhibits and/or prohibits the holding of a representative election sought by a rival organization.
Decertification	The process by which a designated collective bargaining agent may be stripped of such designation.
Economic Items	Those items appropriate for collective bargaining to which financial costs are attached.
Employe, public	Any person employed by a public employer except elected officials and such other employes as may be excluded from the provisions of collective bargaining legislation.
Escape Period	A period, under maintenance of membership agreements, during which a member may resign from the union so as not to be bound to continue membership. Also refers to the period during which a union member may revoke a dues checkoff authorization. Usually quite limited.
Exclusivity	The right granted the designated bargaining agent to be the sole and exclusive representative, during the extent of the period of certification, of all members of the bargaining unit in all matters pertaining to wages, hours and conditions of employment.
Fact-finding	A form of impasse resolution in which a third party reviews matters under dispute, attempts to ascertain the facts regarding them and makes recommendation to the two parties to the dispute as to possible settlement consistent with those facts.

Fringe Benefits	Economic items of a widening variety granted under contract which offer benefit to the employe and represent cost to the employer, yet do not put dollars directly into the pocket of the employe.
Grievance	An allegation by an employe or by the union that the employer or one of its agents, in the process of implementation of the contract, is guilty of misapplication, misinterpretation or violation of one or more specific provisions of the existent contract.
Impasse	That stage in negotiations at which the two parties are, or appear to be, unable to achieve resolution of the issues still on the bargaining table.
Initiation Fee	The fee required by a union as a condition preliminary to membership in the union.
Injunction	An order by a court to perform or to cease to perform a specific activity.
Judicial Review	The means through which a court of appropriate jurisdiction may consider and rule upon actions or findings of a labor relations board.
Layoff	The temporary dropping of an employe from the payroll with the intention of rehiring when the need arises.
Local	A group of employes, usually of a single employer, organized and holding a charter from a parent national organization.
Maintenance of Membership	Union security agreement under which employes who are union members as of a certain date or who become members during the life of the contract are required, as a condition of continuing employment, to remain members during the life of the contract. (See "Escape Period")
Management Rights Clause	The part of a collective bargaining law or contract that expressly and specifically reserves to management certain rights, privileges, responsibilities and authority requisite to the conduct of the enterprise. May include a statement that management's waiver of any of the above is restricted only to those expressly and specifically delineated elsewhere in the contract.
Mediation	That form of impasse resolution in which a third party meets with the two parties to the dispute, together and/or separately, in order to perform a catalytic function in an effort to effect an agreement.
Negotiations Team or Committee	Representatives of an employer or an employe organization designated as bargaining agent empowered to meet at a collective bargaining table to negotiate the precise terms of a prospective or tentative contract. Such a negotiated contract may be subject to ratification by each constituency.
Noneconomic Items	Those matters subject to negotiations to which no financial cost is attached.

Recognition	The accomplishment of the status of collective bargaining agent for a unit of defined extent.
Representation Election	An election conducted by the labor relations board to allow employes within a prescribed unit to express their choice between organizations showing a legitimate evidence of interest in being the collective bargaining agent for that unit, always inclusive of the option of "No Representative."
Runoff Election	A subsequent election required when, in the representative election, no single choice achieves a majority vote among those voting. The choice in the runoff election is between those two options which received the highest number of votes in the representative election.
Scope of Bargaining	The limits, if any, of the appropriate subject matter of bargaining. If such are not set by law, they will be determined by the interaction at the bargaining table.
Seniority	Length of service with the employer and/or in the present capacity with the employer. The terms of the contract will delineate the applications of seniority.
Service Fee	An assessment of all employes in a bargaining unit or of all those in the bargaining unit who are not union members to defray costs for services rendered by the exclusive representative in the negotiation and implementation of the contract. (See "Agency Shop")
Strike	A concerted work stoppage, usually used as an effort in time of impasse to accomplish a contract on terms acceptable to the union.
Supervisor	An employe with authority and/or responsibility to evaluate and/or hire or fire other employes within the bargaining unit. In the private sector supervisory employes enjoy no bargaining rights. In the public sector and in higher education in particular this definition and this condition are more obscure. Here the particular term is neither readily or patently applicable. It may require extensive adjudication by the labor relations board on a case-by-case basis.
Union Shop	The form of union security agreement under which one need not be a member of the union on initial employment but must, within a limited period of time, become and thereafter remain for the duration of the period of the contract a union member, as a condition of continuing employment.
Unfair Labor Practice	A practice prohibited under either collective bargaining law or under rules and regulations responsibly determined by the appropriate agency administering the law.

APPENDIX II A

State by State Classification of Public Employment Acts as of January 1, 1974

CHART A	Specific Postsecondary Collective Negotiations Legislation
CHART B	Omnibus Public Employment Collective Negotiations Legislation
CHART C	Specific K-12 Collective Negotiations Legislation

CHART A

Specific Postsecondary Collective Negotiations Legislation

Group A - States which have specific legislation which deals with public employees in postsecondary educational institutions.

	State	Levels with Current Contract or Units Recognized		Year of Law Enactment		
1.	Alaska[1]			1972		
2.	Hawaii[1]	4 year	2 year	1970	1971	
3.	Kansas[2]		2 year	1970		
4.	Minnesota[1]		2 year	1971	1972	
5.	Montana[4]			1973		
6.	New Hampshire[6]	4 year[5]	2 year[5]	1969	1970	
7.	New York[1]	4 year	2 year	1967	1969	1971
8.	Oregon[1]		2 year	1973		
9.	Pennsylvania[1]	4 year	2 year	1970		
10.	South Dakota[1]			1970		
11.	Vermont[1]	4 year	2 year	1969	1972	
12.	Washington[3]	4 year[5]	2 year	1971	1973	

[1]Within omnibus public employment legislation - see Chart B.
[2]Meet and confer rather than mandatory legislation.
[3]Specific special legislation for community colleges.
[4]Postsecondary personnel covered under K-12 act by implication in 1973 Public Employment Bill.
[5]Nonteaching employees only.
[6]Statute covers nonprofessional employees in state colleges and universities.

Group B - States in which no specific or special postsecondary mention in the language of the legislation of an omnibus public employee bill but where by implication or interpretation postsecondary personnel and institutions are included.

	State	Levels with Current Contracts or Units Recognized		Year of Law Enactment	
1.	Delaware[1]	4 year		1965	
2.	Massachusetts[1]	4 year	2 year	1970	
3.	Michigan	4 year	2 year	1965	
4.	Nebraska	4 year		1969	
5.	Nevada[2]			1969	1971
6.	New Jersey	4 year	2 year	1968	
7.	Rhode Island	4 year	2 year	1970	
8.	Wisconsin	Vocational-technical		1971	

[1]Meet and confer act only.
[2]Community colleges may be looked upon as special districts under local government employee relations act; however university system employees would not be covered.

Group C - States which have no collective negotiations legislation for postsecondary education but in which there are de facto postsecondary contracts or employee unit recognition and in which some legislative activity in respect to legalization of the de facto situation has taken place since 1970.

	State	Levels with Current Contract or Units Recognized		Year of Law Enactment for Related Legislation for K-12	
1.	Colorado		2 year		
2.	Florida[3]		2 year		
3.	Illinois[4]	4 year[4]	2 year[4]		
4.	Maine[1]	Vocational-technical		1969	1970
5.	Maryland[2]	4 year	2 year	1968	1971
6.	Ohio	4 year			
7.	Utah		2 year		

[1]State has a town or municipal level statute which covers K-12 personnel only.
[2]State has a K-12 meet and confer law.
[3]Florida has allowed two counties (Hillsbourgh and Pinellas) to allow K-12 teachers to organize. They are meet and confer statutes. Supreme Court of Florida has ordered legislature to pass a public employee omnibus bill. They failed to do so and issue is before the courts again. State constitution allows such legislation.
[4]Court decision allows teachers and other local employees to bargain and nonacademic employees bargain under university personnel code.

Group D - States in which there has been considerable to moderate legislative activity since 1970 of an omnibus legislation level in which postsecondary personnel would have been included.

States

1. Alabama
2. Arizona
3. Arkansas
4. California[1] [2]
5. Connecticut[1]
6. Idaho[1]
7. Indiana[1]
8. Iowa
9. Kentucky
10. Missouri[2] [3]
11. New Mexico[5]
12. North Carolina[3]
13. North Dakota[1] [4]
14. Oklahoma[1]
15. Tennessee
16. Texas
17. Virginia
18. West Virginia
19. Wyoming

[1]State has a K-12 professional negotiations act of a mandatory or meet and confer nature.
[2]State has an omnibus public employment act of a meet and confer nature but postsecondary personnel are not covered under the statute.
[3]State has laws prohibiting public employee or employers from bargaining in educational settings.
[4]North Dakota has a limited public negotiations act for state and municipal employee.
[5]New Mexico has set of State Personnel Board regulations which allow for some of the aspects of collective negotiations for public employees of a permissive nature. The regulations are not however a formal public employees law; in effect New Mexico is in a class by itself.

Group E - States in which there has been no notable legislation pending on the subject of collective bargaining for public employees in postsecondary education.

States

1. Georgia[1]
2. Louisiana
3. Mississippi
4. South Carolina

[1]Omnibus meet and confer bills failed to pass in 1971 and 1973 legislature.

CHART B

Public Employee Collective Negotiations Legislation

Group A - States in which there exist omnibus public employment acts of a formal procedural and mandatory nature.

	State	Year Enacted				
1.	Alaska	1959	1968	1972		
2.	Hawaii	1970	1971			
3.	Michigan	1965				
4.	Minnesota	1971	1972			
5.	Montana[2]	1973				
6.	Nebraska[2]	1969				
7.	New Hampshire[1]	1969	1970			
8.	New Jersey	1968				
9.	New York	1967	1969	1971		
10.	Oregon[2]	1973				
11.	Pennsylvania	1970				
12.	Rhode Island[2]	1970				
13.	South Dakota	1970				
14.	Washington	1967	1971			
15.	Wisconsin[3]	1959	1965	1967	1969	1971

[1]Limited in coverage of public employees.
[2]State has special K-12 law also.
[3]Has municipal employees law also.

Group B - States in which there exist omnibus public employee collective statutes of a meet and confer or permissive nature.

	State	Year Enacted		
1.	California[3]	1961	1964	1971
2.	Connecticut[2]	1965		
3.	Delaware[3]	1965	1970	
4.	Florida[1]	1959		
5.	Kansas[3]	1971	1972	
6.	Maine[2]	1969	1970	
7.	Massachusetts	1970		
8.	Missouri	1967		
9.	Nevada[2]	1969	1971	
10.	Oklahoma[2]	1971		
11.	Vermont[3]	1969	1971	

[1]Situation is quite vague at the present time due to governor's executive order in 1970 and current legal actions.
[2]Law is limited to municipal or town employees.
[3]State has special K-12 laws also.

Group C - States which by statute prohibit any form of collective negotiations by public employees.

	State	Year Enacted
1.	Alabama[1] [2]	1967
2.	Georgia	1962
3.	North Carolina	1959
4.	Texas[2]	1967

N.B. See also Florida and note #1, Group C.
[1]Omnibus legislation failed in 1972 legislature.
[2]Omnibus legislation failed in 1973 legislature.

Group D - States which have to date made no provision for collective negotiations legislation for public employees with the exception of K-12 personnel.

	State	Year Enacted	
1.	Idaho[1]	1971	
2.	Indiana[2]	1973	
3.	Maryland[2]	1968	1971
4.	North Dakota	1969	1972

[1]Very limited K-12 statute.
[2]Omnibus bill failed in 1973 legislature.

Group E - States which to date have made no provision for public employee omnibus legislation of any kind.

States

1.	Arizona	6.	Kentucky	11.	South Carolina[3]
2.	Arkansas[1]	7.	Louisiana	12.	Tennessee
3.	Colorado[2]	8.	Mississippi	13.	Utah[2]
4.	Illinois[1] [2]	9.	New Mexico[2] [4]	14.	Virginia[2]
5.	Iowa[1] [2]	10.	Ohio[2]	15.	West Virginia
				16.	Wyoming

[1]Omnibus legislation failed in 1972 legislative session.
[2]Omnibus legislation failed in 1973 legislative session.
[3]Passed a local government act in 1971.
[4]New Mexico has State Personnel Board regulations which allow modified and permissive limited collective negotiations for public employees.

CHART C

Specific K-12 Collective Negotiations Legislation

Group A - States with specific K-12 collective negotiations legislation of a formal nature separate from omnibus public employment legislation.

	State	Year Enacted	
1.	Alaska[1]	1970	1971
2.	Indiana	1973	
3.	North Dakota	1969	1972
4.	Rhode Island[1]	1966	
5.	Washington	1965	

[1]Has an omnibus public employee act separate from K-12 act.

Group B - States which have K-12 collective negotiations statutes on a meet and confer basis.

	State	Year Enacted	
1.	California	1965	1970
2.	Connecticut	1961	1969
3.	Delaware	1969	
4.	Idaho	1971	
5.	Kansas	1970	
6.	Maryland	1968	1971
7.	Montana	1971	
8.	Oklahoma[1]	1971	
9.	Oregon	1971	
10.	Vermont	1969	

[1]Limited scope of coverage.

Group C - States with no K-12 collective negotiations legislation.

States

1. Alabama
2. Arizona[1 2]
3. Arkansas
4. Colorado[2]
5. Illinois[1 2]
6. Iowa[1 2]
7. Kentucky[2]
8. Louisiana
9. Mississippi
10. New Mexico[2]
11. Ohio[2]
12. South Carolina
13. Tennessee[1]
14. Utah
15. Virginia[1]
16. West Virginia[1 2]
17. Wyoming[2]

[1]Legislation failed in 1972 state legislature for K-12 level.
[2]Legislation failed in 1973 state legislature for K-12 level.

Group D - K-12 personnel covered by omnibus public or municipal employment legislation.

	State	Year Enacted
1.	Hawaii	1971
2.	Maine[1] [2]	1969 1970
3.	Massachusetts[1]	1970
4.	Michigan	1965
5.	Minnesota	1971
6.	Nevada[2]	1969
7.	New Jersey	1968
8.	New York	1971
9.	Pennsylvania	1970
10.	South Dakota	1970
11.	Wisconsin[2]	1961 1969

[1]This is a meet and confer type legislation--not a formal one.
[2]Municipal employees act covers K-12 in these states.

Group E - States in which local boards may negotiate but are not obligated to do so for K-12 personnel.

	State	Year Enacted
1.	Florida	1965
2.	Nebraska	1967
3.	New Hampshire	1970
4.	Texas	1967

Group F - States in which K-12 collective negotiations are prohibited by legislation.

	State	Year Enacted
1.	Georgia[2]	1962
2.	Missouri[1]	1967
3.	North Carolina[2]	1959

[1]Legislature rejected revision of law in 1972.
[2]Declared unconstitutional by court. No legislation as yet passed or proposed to alleviate situation.

APPENDIX II B

Current State by State Legislative Status of Public Employee Omnibus, and Specific K-12 and Postsecondary Collective Negotiations Legislation

as of

January 1, 1974

STATE

ALABAMA:

(a) Statute Code Title 55 317(1) - 317(4) (Solomon Act 1953) Supplement 1967. Declared unconstitutional June 15, 1972. Prohibits public employee organization, but allows K-12 and postsecondary. Never implemented.

(b) 1972 House Bill 520, omnibus legislation: Failed
Senate Bill 206, omnibus legislation: Failed

NB This state has a firefighters collective negotiations act. Title 37, Chapter 8, Article 7, Section 450.

ALASKA:

(a) Statute Sections 23:40.070-23:40-260 Added by Chapter 108L, 1959 as amended by Chapter 231.L, 1968 and amended by Chapter 113, 1972 (PERA) for all state employees.

(b) Statute Sections 14.20.550-14.20.610 added by chapter 18 L, 1970 as amended by chapter 43 L, 1971 K-12 legislation as amended by Chapter 71,L1972. (PERA) which includes school administrators as well.

ARIZONA:

(a) 1970 omnibus public employee bill: Failed

(b) 1972 House Bill 2328, K-12, community college district allowed: Failed

(c) 1973 Senate Bill 1073, arbitration for public employment: Failed

Senate Bill 1268, K-12 and postsecondary allowed: Failed

NB State has no public employment collective negotiations legislation.

ARKANSAS:

(a) 1973 Senate Bill 183, omnibus public employment bill: Failed

NB State has no public employment collective negotiations legislation.

CALIFORNIA:

(a) Statute California Government Code 3500-3510 added by statutes 1961, Chapter 1964 as 3525 -3536 as amended by House Bill 1107, 1971. Meet and confer for public employment: Meyers, Miles Brown act.

(b) Statute California Education Codes 13080-13088 added by statutes 1965, Chapter 2041 as amended by statute 1970, Chapters 1412, 1413. (The Winton Act - 1965)

(c) 1970 specific bill to allow collective negotiations for community colleges: Failed

CALIFORNIA: (con't.)

(d) 1972 number of bills to extend collective negotiations to postsecondary education and for omnibus public employment: all failed. Legislature set up an extensive study and issued a report in 1973.

(e) 1973 Senate Bill 400, an omnibus bill which passed legislature but was vetoed by Governor Reagan.

Assembly Bill 1243, omnibus bill: carried over after veto.

COLORADO:

(a) 1973 House Bill 1472, K-12, postsecondary collective negotiations: Failed in House by one (1) vote.

House Bill 1368, postsecondary due process bill: Failed in Senate.

House Bill 1561, omnibus public employee bill: Failed in committee.

NB State has no public employment collective negotiations legislation.

CONNECTICUT:

Statute Connecticut General Statutes Revised - Chapter 166 - added by 1961, P.A. 562 as amended by 1969 P.A. 811. See also P.A. 298, 1965 as amended by 811. K-12, collective negotiations allowed school administrators included.

(a) Statute Public Act 159, Law 1965 as amended. A municipal employee relations act, last amended by 1971 Public Act 532.

(b) 1971 postsecondary collective negotiations bill: Failed

(c) 1972 House Bill 5198, omnibus public employment bill: Passed legislature; vetoed by the governor.

(d) 1973 House Bill 5482, omnibus bill: Failed
Senate Bill 485, postsecondary collective negotiations bill for state employed educators: Failed
There were numerous amendments to K-12 statutes of a technical or improvement nature: most passed.

DELAWARE:

(a) Statute Delaware Code annotated Title 19, Chapter 13, 1301-1312, added by 55 Delaware Laws Chapter 126, 1965 as amended by 57 Delaware Laws, Chapter 669, 1970. Omnibus bill, meet and confer nature. Exempts K-12.

(b) Statute Delaware Code annotated Title 14, Chapter 40 4001-4013, added by 57 Delaware Laws, Chapter 298, 1969. K-12 law, meet and confer nature.

(c) 1973 House Bill 156, improvement of K-12 legislation of 1969: Failed.
Senate Bill 268 to move K-12 law from meet and confer to stronger status: Failed.

FLORIDA:

(a) 1968 Revised Florida Constitution guarantees collective bargaining for public employees but the legislature has not enacted rules of procedure.

(b) Hillsbourough County Law 1971, Chapter 71-686. Pinellas County Law 1971, Chapter 71-875. Allows K-12 negotiations in two counties; includes counselors, librarians and allows public school employees with classroom teaching duties to negotiate.

(c) 1971 Governor's Executive Order 71-29, forbids collective negotiations by state and local employe units except the governor.

(d) 1971 Senate Bill 1586, omnibus bill: Failed.

(e) 1972, a number of bills pro and anti collective negotiations were introduced: all failed. (In particular, Senate Bill 91 and House Bill 3314 for K-12.)

(f) 1973 House Joint Resolution 1756, proposes a constitutional amendment to forbid omnibus public employee act of any kind: Failed.

GEORGIA:

(a) Georgia Law 1968, Number 967, granted city of Savannah public employees the right to negotiate. However, the Georgia Supreme Court in 1969 in Local 574 International Association of Firefighters vs. Floyd ruled that a 1962 Georgia statute, Georgia Code annotated 39:309, 39:310, which gave municipalities the right to control employment (Number 967) was unconstitutional.

(b) The Legislature has rejected omnibus meet and confer bills in 1971-1973 sessions but passed a firefighters law (see House Bill 569, Law 1971, Section 1-8).

HAWAII

(a) Session Laws of Hawaii, P.A. 171, Law 1970 (PERA) (Senate Bill 1696-70) as amended by P.A. 212, L. 1971, Chapter 89, omnibus comprehensive bill. Numerous technical amendments were passed in 1972-1973 sessions further improving this statute. Others which would have weakened the statutes omnibus quality have been defeated.

(b) 1973 House Bill 124, exempts students and student employees from collective negotiations act: Passed.

IDAHO:

(a) Has no general labor relations act but supports organizational rights of state employees: See Sections 44-701 of 1933 anti-injunction act; 44-102, 44-107, 44-107a of 1949 act establishing a department of labor. Municipalities have the power to enter into collective bargaining agreements if no local ordinance forbids it: Attorney General's opinion, March 18, 1959.

IDAHO: (con't.)

(b) Statute Laws 1971, House Bill 209, Chapter 103a, K-12 meet and confer law was adopted; includes school administrators.

(c) Idaho has a firefighters act, Chapter 138, L1970, but no other public employee collective bargaining.

(d) 1973 House Concurrent Resolution 14-1973, instructed legislative counsel to make a comprehensive study of an omnibus bill for the next 1974 Legislature including postsecondary state units.

ILLINOIS:

Illinois allows teachers and other local employees to bargain collectively by court decision in Chicago Division of the Illinois Education Association vs. Board of Education of the City of Chicago 76 Illinois App. 2D 456, 222 NE 2D, 243 1966. State university nonacademic personnel are bargaining under the state's university personnel code authority. Teaching employees at the university level are not covered under any legal authority or current court decision.

(a) 1971 House Bill 87-1112, 2083 and 1972 House Bill 1129: all failed in legislature, both omnibus and K-12 bills. Legislature commission on labor laws drafted a comprehensive bill.

(b) 1972 had four bills for K-12 and postsecondary held over to 1973 session.

(c) 1973 House Bill 3, Omnibus Bill: Failed. House Bill 448, omnibus education collective negotiations bill carried over and passed the House; includes postsecondary personnel omnibus bill.
House Bill 1000, omnibus bill: Failed. House Bills 1629, 1630 and 1652, omnibus bills: Failed. Senate Bill 205, anti-employee bargaining bill: Failed. Senate Bill 852, public employee omnibus: carried over in legislature. Senate Bill 897, public employees education omnibus bill, companion to House Bill 448: carried over in legislature. Senate Bill 1000, public employees omnibus bill is similar to Senate Bill 852. Illinois is in a very active status in such legislation at present. The February 1974 session will act on it.

NB Illinois to date has no public employee collective bargaining legislation.

INDIANA:

(a) The General Assembly retains the power to enter into bargaining agreements with exclusive representatives until such power is granted to state agencies: Attorney General's opinion, August 8, 1969.

INDIANA: (con't.)

(b) State supervisory and professional employees are advised not to join associations primarily composed of their subordinate employees although they may do so: Attorney General's opinion, June 6, 1968.

(c) Unless otherwise forbidden by statute, state and local public officials may consult with employee representatives on wage laws and working conditions: Attorney General's opinion, October 6, 1966.

(d) 1972, a number of bills for K-12 and postsecondary and omnibus were introduced and defeated.

(e) 1973 House Bill 1280, omnibus labor supported bill: Failed. Senate Bill 257,266, omnibus with exclusions for teachers in two bills: Failed in this session.

(f) Statute Senate Bill 255, passed as Public Law 217, Acts of 1973, K-12 act of a formal nature. Makes Indiana 30th state with some form of statutory public employee bargaining for teachers at some level.

IOWA:

(a) 1970 omnibus bill passes Senate and failed in House. Led to a study by Board of Regents for postsecondary level. State Supreme Court held that public employees may confer with employee representatives within the bounds of statutes and administrative regulations. Thus the Board of Regents may confer but has "no authority to enter into collective bargaining in an industrial context."

(b) 1971 extensive Board of Regents study issued as to position on collective negotiation legislation, Senate Files 387, 52, 567, 412, House File 336: All failed.

(c) 1972 Senate Files 387, 366, omnibus bills: Failed.

(d) 1973 Senate Files 273, House File 263, omnibus bills: Passed Senate, continued in 1974 session of the House. Iowa, like Illinois, is very close to enactment of an omnibus statute. This will be a meet and confer law of an omnibus nature it appears at this time.

KANSAS:

(a) Statute Senate Bill 333, Law 1971, effective March 1, 1972, omnibus bill for public employees of a meet and confer nature. See Amendment Senate Bill 509 1,1972, amended by House Bill 1531, L1973.

(b) Statute House Bill 1647, effective March 23, 1970, covered K-12 and community college level personnel, not other postsecondary who were state employees.

KENTUCKY:

(a) 1972 Senate Bill 148, K-12 passed but vetoed by governor. House Bill 364X meet and confer bills 3276: failed. A 1965 attorney general's opinion (65-84) indicates a right of teachers to bargain collectively.

(b) Kentucky has a firefighters act, Chapter 345 revised statutes, and a police bill, House Bill 217, L 1972, but no general public employees collective negotiations legislation. Recent teacher attempts to organize have been refused by the courts and attorney general.

LOUISIANA:

(a) No legislative history. This state has no public employee collective negotiations legislation.

MAINE:

(a) Statute Maine Revised Statutes annotated title 26, 961-972 added by 1969, Chapter 424 as amended by 1970 Chapter 578, as further amended by Chapter 609, 1972. Omnibus meet and confer bill for town and municipal employees not state employees. See House Bill 636 - LD824 includes K-12 and school administrators. See also Chapter 609 L 1972.

(b) 1970 study by legislature and governor on post-secondary collective negotiations legislation.

(c) 1971 bill introduced for university personnel: deferred to 1973 session.

(d) 1972 Legislative Document 1773-1809 for state employees and university system employees. These are in a study committee for 1974 legislative action. Passage appears possible.

MARYLAND:

(a) Statute Maryland Annotated Code, Chapter 405, Section 160, L1969 added by 1968, Chapter 483 as amended by 1971, Chapter 427 and Chapter 630 L,1972. A K-12 meet and confer statute and it includes school administrators.

(b) A Baltimore County act covers local employees of that county. Article I, Sections 110-124, Baltimore County Code.

(c) 1972 House Bill 1393, community college approval for collective negotiations: Failed. Also a resolution to extend power of governor's Study Commission on Postsecondary Education to include collective negotiations also failed.

MARYLAND: (con't.)

(d) 1973 House Bill 354, community college approval legislation: Again failed.

House Bill 1482, omnibus bill: Failed.

MASSACHUSETTS :

(a) Statute Massachusetts General Laws Annotated, Chapter 149, 178B-N as amended by 1970 292, 340, 445, 463. Omnibus law of a meet and confer nature. See also chapter 375, L. 1972.

(b) 1972 House 1514, to set compensation and hours of work in institutions of higher learning: Failed.

1973 Massachusetts law has been changed to allow wages, hours and conditions of employment to be negotiated.

MICHIGAN:

(a) Statute Michigan Compiled Laws of 1948 as amended annotated, Sections 423.201, 423.216 as amended by PA 379, 1965 (PERA). See also, Sections 423.231, 423.247 as amended by House Bill 5087, 1972. Covers police and firefighters. Omnibus public employee bill with a few technical amendments since 1965. In 1973 an agency shop bill was passed plus other amendments. Currently the right to strike for teachers is being seriously considered as new legislation.

MINNESOTA:

(a) Statute Chapter 3, L1971 (PERA), effective July 1, 1972 repealed the previous public employee law and teachers law of 1967. This is an omnibus public employee bill of a comprehensive nature.

MISSISSIPPI:

(a) No legislative history. This state has no public employment collective negotiation legislation.

MISSOURI:

(a) Statute Missouri Annual Statutes 105,500-540, Missouri statutes, revised as amended by House Bill 166,1967 Senate Bill 36, L 1959. Omnibus statute excluding K-12, postsecondary, police state patrolmen, deputy sheriffs and National Guard. A meet and confer law. Senate Bill 36, amendment 105.10 allows the excepted groups to form fraternal associations only.

(b) 1972 House Bill 1250, to include K-12 and also university personnel: Failed (also House Bill 1274).

(c) 1973 Senate Bill 190, to have an omnibus bill (plus Senate Bill 233): Both failed. Also House Bill 160, K-12: Failed.

MONTANA:

(a) Statute Chapter 424, House Bill 455 L 1971, effective July 1, 1971. K-12, including school administrators, meet and confer law. This covers under new 1973 law school personnel at all levels.

(b) Statute Section 75-6115, Revised Code of Montana 1947, 1973, Act 59, Sections 1601-1616. Omnibus bill for state employees.

NEBRASKA:

(a) Statute Nebraska LB 435, L1967. K-12 meet and confer law; not all school districts covered or binding. It covers certified public school employees.

(b) Statute LB 15-1969, revised Nebraska Statutes Section 48-800, et seq., for the first time granted public employers the power to recognize and bargain collectively with labor organizations.

NEVADA:

(a) Statute Laws 1969, Chapter 650 as amended by AB 178, Laws 1971, Chapter 340. Local government employee management relations act. Covers K-12, special districts and nurses employed by the state, but other state employees are not covered.

NEW HAMPSHIRE:

(a) Statute New Hampshire Revised Statutes, Chapter 290L-1969 annual 98 C:1-98 C:7 added by 1969, 290:1 as amended by 1970, 41:1. Omnibus bill which does not cover K-12 and state academic employees. State college nonacademic employees are covered in specific sections only.

(b) Statute New Hampshire Revised Statutes Annual 31:3. This allows municipal employees and town employees, including K-12 personnel, rights of bargaining but boards are not required to do so.

(c) State has firefighters law, Chapter 64, L1972.

(d) 1973 House Bill 889: Failed. K-12 dispute settlement bill: Failed. Senate Bill 196, omnibus bill would have included postsecondary teaching personnel: Failed.

NEW JERSEY:

(a) Statute New Jersey revised statutes annual Chapter 199, L1941, 34:13A-11 as amended by L1968, Chapter 303: Omnibus bill for all public employees. There have been a number of technical and improvement amendments passed over the years since 1969. It includes school administrators.

NEW MEXICO:

(a) An April 14, 1971 Attorney General opinion indicates limited collective bargaining rights for public employees and teachers. State operates under State Personnel Board rules which includes a limited bargaining procedure.

(b) In 1971 a comprehensive omnibus bill was defeated by one vote.

(c) 1973 Senate Bill 172, omnibus public employment bill: Failed. House Bill 141, House Bill 243, prohibition of public employee collective negotiation: Failed.

NEW YORK:

(a) Statute Chapter 392 L1967 (Taylor Act), New York Civil Service Law, Sections 200-212 as amended by L1971, Chapter 503. Chapter 818, L.1972. Omnibus public employee statute covers postsecondary fully.

(b) Chapter 54, Administrative Code, New York City, for further local coverage.

NORTH CAROLINA:

(a) Statute North Carolina General Statutes 95-85, 95-88, 1959:
   (1) Provisions prohibit public employees from becoming union members for purposes of collective bargaining;
   (2) Declares contracts between governmental units and labor unions to be illegal;
   (3) And declares any violation to be a misdemeanor, upheld in Atkins vs. City of Charlotte, 70LRRM 2732;
   (4) Later declared unconstitutional by U.S. District Court.

(b) 1971 study commission on teacher collective negotiations: Failed.

(c) 1973 House Bill 1070, public employee omnibus bill: Failed.

However, a study commission has been established to report to 1974 session. North Carolina has no public employee collective negotiations legislation.

NORTH DAKOTA:

(a) Statute North Dakota Century Code 15-38.1-02, 15-38.1-15 added by 1969 Chapter 172, House Bill 175. K-12 law includes school administrators.

(b) Statute North Dakota Century Code, Chapter 34-11 as enacted by Chapter 219, L1951. Mediation law on limited negotiations for public employees and municipal employees.

NORTH DAKOTA: (con't.)

(c) 1973 House Bill 1297, to include college and state school faculties under 1969 act: Failed.

OHIO:

(a) Comprehensive omnibus bill failed in 1967, 1968, 1969, 1971. 10 bills in 1972.

(b) 1973 Senate Bills, 197, 222 180, omnibus bills carried over to 1974 session. Ohio has no public employee collective negotiation legislation, but many work stoppages have occurred in state.

OKLAHOMA:

(a) Statute House Bill 1325, L 1971. K-12 legislation which allows negotiation on items affecting the performance of professional services only. It includes non-professional school employees as well.

(b) Statute Sections 548.1-548.14, Title II, Oklahoma Statutes 1971. Local government, police and fire law, meet and confer.

(c) 1972 Senate 550, allow collective negotiations with governing boards in postsecondary institutions: Failed.

(d) 1973 House Bill 1348, specific postsecondary collective negotiations bill: Carried over to 1974 session.

OREGON:

(a) Statute Laws 1963, Chapter 579 as amended by Senate Bill 55, L 1969, effective July 1, 1969. Omnibus biil for public employees, meet and confer type.

(b) Statute Oregon Revised Statutes, Chapter 647, L1969-342.450, 342.470 as amended by laws 1971, Chapter 755, effective September 9, 1971. A K-12, meet and confer law including school administrators.

(c) Statute Laws 1971, Chapter 582. Allows K-12 nonteaching classified personnel to bargain.

(d) In 1972-1973 an Oregon legislative study commission on omnibus legislation was undertaken.

(e) Statute 1973, an omnibus statute, Oregon Revised Statutes 243.711 to 243.795, L1973. Mandatory nature amends earlier acts under (a) above (PERB) established under law.

PENNSYLVANIA:

(a) Statute Pennsylvania statutes annual title 43, 1101.101, 1101.2301 added by act number 195 effective July 23, 1973 (PERA). Omnibus public employment act. A number of amendments of a technical nature have been passed since 1970.

(b) Statute Senate Bill 1343, L 1968. Covers police and firefighters. The state has a municipal transit law also.

RHODE ISLAND:

(a) Statute Rhode Island General Laws, 1967 Annual title, 36-11-1, 36-11-6 as amended by PL 1970 Chapter 116. State employees omnibus bill covers postsecondary by implication. See also House Bill 5354.L1972.

(b) Statute Rhode Island General Laws, Annual 1969 title, 28-9.4-1, 28-9.4-19 as re-enacted by PL 1970, Chapter 9. Municipal employees law.

(c) Statute Rhode Island General Laws Annual 1969, 28-9.3-1, 28-9.3-16 as enacted by PL 1966, Chapter 146. K-12 law; there have been a number of amendments to these laws since their enactment. State also has separate police and firefighters laws.

SOUTH CAROLINA:

(a) No legislative history. State has limited local government act, Senate Bill 124, L1971. See South Carolina Code of Laws Article 4.1 Sections 49.11 to 1-49.14 and article 5.1 Sections 1-66.11-166-16 1971. Does not include teachers.

SOUTH DAKOTA:

(a) Statute South Dakota Compiled Laws Annual 3-18-1, 3-18-16 added by laws 1970, Chapter 3-18, Chapter 88. South Dakota Laws, 1969 omnibus public employment act, covers school administrators as well. Has a labor and management relations board under 1971 amendments to laws.

(b) Police and firefighters are covered under Senate Bill 121, Sections 1-15, July 1, 1971.

TENNESSEE:

(a) 1971 Senate Bills 516 and House Bill 579, to allow college and university employees, non-academic, to bargain collectively: Failed in the Senate.

(b) 1972 Senate Bill 1816 and House Bill 2041, K-12 bill to meet and confer: Failed.

TENNESSEE: (con't.) NB Tennessee has no public employment collective negotiations legislation except for public transit employees.

TEXAS:

(a) Attorney General has ruled that public employees have the right to present grievances concerning wages, hours or working conditions through a labor union that does not claim the right to strike or bargain collectively: Attorney General's opinion, number M-77, May 18, 1967.

(b) Statute Article 5154C, Laws 1947 forbids collective bargaining contracts by public employees and prohibits strikes by employees. (See Annotated Title 49, Chapter 22, Article 278a.)

(c) 1973 House Bill 370, K-12: Failed. Senate Bill 48-834, omnibus bill: Failed.

(d) 1973 Senate Resolution 20, governor to convene a special study committee on omnibus public employment act and report to 1974 legislature.

NB Texas has no public employee collective negotiations legislation.

UTAH:

(a) 1973 House Bill 93, omnibus bill: Failed.

NB Utah has no public employee collective negotiations legislation. There is a 1955 right to work law that allows organization but not negotiations.

VERMONT:

(a) Statute Vermont Statutes Annotated Title 21, Sections 1701 - 10 (1967) as amended. Vermont municipal employees bill included local fire-fighters.

(b) Statute Chapter 27, Vermont Statutes Annotated as amended by House Bill 224 L1972 as amended by Chapter PA 193, L1972. Omnibus public employment bill covers all state employees, including state police and college employees.

(c) Statute Vermont statutes annotated, Chapter 57 of 16 VSA as added by Chapter 27 L1969. K-12 meet and confer. Statute includes school administrators.

VIRGINIA:

(a) 1972 Senate Bill 180, K-12 bill: Failed.

VIRGINIA: (con't.)

(b) 1973 Senate Bill 906 and Senate Bill 274, omnibus public employment bill: Failed. House Bill 1692, House Bill 890, House Bill 934, K-12, meet and confer type: Failed.

NB Virginia has no public employment collective negotiations legislation, but attorney general's opinions July 30, 1962, February 18, 1970 do allow local employees and teachers the right to bargain.

WASHINGTON:

(a) Statute Washington Revised Code 41-56.010, 41-56.950 added by laws 1967 Chapter 108, as amended by laws 1971, Chapter 19. See also Chapter 131, L 1973. Partial omnibus bill for municipal employees; K-12 or postsecondary are excluded.

(b) Statute Laws 1971, House Bill 739 effective August 9, 1971. Community college collective negotiations act. Amended in detail by Senate Bill 2153, 1973 with partial veto by governor.

(c) Statute Washington Revised Code Title 28B Chapter 28B-16 L1969. Sets up procedure to extend collective negotiations to classified employees in higher education under the jurisdiction of Higher Education Personnel Board. Law excludes faculty which are not yet covered under Washington statute.

(d) Statute Washington Revised Code, Sections 28A-72.010, 28-72.090 added by 1965 Chapter 143. K-12 statute.

(e) Senate Bill 34.1967. Covers port district employees as special group.

WEST VIRGINIA:

(a) Senate Concurrent Resolution 1970. Provided for a study of public employment relations. Study continued in 1971, 1972, 1973.

(b) 1971 omnibus bill: Failed by a narrow margin.

(c) 1972 Senate Bill 158, K-12: Failed.

(d) 1973 House Bill, K-12: Failed.

NB West Virginia has no public employee collective negotiations legislation.

WISCONSIN:

(a) Statute Subchapter of Chapter III as re-enacted by Chapter 270 of L 1971. Omnibus public state employee act; also covers higher education classified employees. Omnibus public employment act for employees limits areas of bargaining mainly to working conditions. Does not cover teachers or post-secondary personnel of a professional nature.

(b) Statute Wisconsin statute 1959 annual Sections 111.70, 111.70(6) and 111.71 bylaws 1961, Chapter 663 as amended by laws, 1969, Chapter 276. Laws cover municipal employees except police, sheriffs, deputies and county traffic officers. K-12 personnel covered through this statute.

(c) 1973 Assembly Bill 825 and 828, to set up a separate higher education employment relations act for public professional employees of the University of Wisconsin system: Carried over to 1974. There has been considerable study by the governor's Advisory Committee on State Employment Relations on the nonclassified employee group needs for collective negotiations since 1969. A statute is expected in 1974.

WYOMING:

(a) 1973 Senate File 10- K-12 Bills and House Bill 234A: Failed. The earlier version of this bill included higher education but was amended to exclude such personnel in committee before it reached the debate stage.

(b) Wyoming has a firefighters law, Chapter 197 L, 1965, Sections 27-265, 27-273.

Persons interested in detailed analysis of the various state public employment laws should consult the following, published by the Industrial Relations Center, College of Business Administration, University of Hawaii, Honolulu, Hawaii.

1. Helene S. Tanimoto, Guide to Statutory Provisions in Public Sector Collective Bargaining: Impasse Resolutions Procedures, 1973.

2. Dennis T. Ogawa and Joyce M. Najita, Guide to Statutory Provisions in Public Sector Collective Bargaining: Unit Determination, 1973.

3. Joyce M. Najita and Dennis T. Ogawa, Guide to Statutory Provisions in Public Sector Collective Bargaining: Union Security, 1973.

4. Joyce M. Najita, Guide to Statutory Provisions in Public Sector Collective Bargaining: Scope of Negotiations, 1973.

5. Helene R. Shimaoka, Topic Coded Titles on Public Employee Collective Bargaining with Emphasis on State and Local Levels, 1972.

6. Joel Seidman, Public Sector Collective Bargaining and the Administrative Process, 1972.

7. Center Staff, Collective Bargaining and the Classroom, Report Number 7, 1972.

See also:

Terrence N. Tice, editor, Faculty Power: Collective Bargaining on the Campus, Institute of Continuing Legal Education, University of Michigan, Ann Arbor, 1972.

Terrence N. Tice, editor, Faculty Bargaining in the Seventies, Institute of Continuing Legal Education, University of Michigan, Ann Arbor, 1973.

The charts and the data in these books in addition to this study and its appendices should provide any interested party with as comprehensive a set of information as may be available on the subject.

APPENDIX III

OTHER SOURCE MATERIALS FOR FURTHER ANALYSIS

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OTHER SOURCE MATERIALS FOR FURTHER ANALYSIS

A. Printed Materials on Public Employee Bargaining with Emphasis on Public Sector Bargaining for Postsecondary Education.

Adell, B. L., and D. D. Carter, Collective Bargaining for University Faculty in Canada, Industrial Relations Center, Kingston, Ontario, 1972.

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Catholic University Law Review, Vol. 21, No. 3, spring 1972.

Chernish, William N., Coalition Bargaining: A Study of Union Tactics and Public Policy, University of Pennsylvania Press, Philadelphia, 1971.

Chronicle of Higher Education, Vol. 8, No. 10, Nov. 26, 1973.

Clarke, R. T., Jr., "Public Employee Labor Legislation: A Study of the Unsuccessful Attempt to Enact a Public Employee Bargaining Statute in Illinois," Labor Law Journal, Vol. 20, pp. 164-173, March 1969.

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"Collective Bargaining: New Faces at the Bargaining Table," Compact, Education Commission of the States, Vol. 6, No. 3, Denver, Colo., June 1972.

Community and Junior College Journal, Vol. 44, No. 4, American Association of Community and Junior Colleges, Washington, D.C., December-January 1974. Articles by Ray Howe, Maurice Benewitz, James Begin et al.

Dole, Richard F., Jr., "State and Local Public Employee Collective Bargaining in the Absence of Explicit Legislative Authorization," Iowa Law Review, pp. 539-559, Vol. 54 (4).

Duryea, E. D., and Robert S. Fisk, Faculty Unions and Collective Bargaining on Campus, Jossey-Bass, San Francisco, Calif., 1973.

Elam, Stanley, and Michael H. Moskow, editor, Employee Relations in Higher Education, Phi Delta Kappa, Bloomington, Ind., 1969.

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Faculty Power, Collective Bargaining on the Campus, Institute of Continuing Legal Education, University of Michigan, Ann Arbor, 1972. T. Tice, editor.

Ferguson, John B., and Joyce M. Najita, Government Employees and Collective Bargaining, Hawaii PERB, Year One, Industrial Relations Center, College of Business Administration, University of Hawaii, Honolulu, 1970.

Ferguson, Tracy H., "Collective Bargaining in Universities and Colleges," Labor Law Journal, Vol. 17, No. 12, December 1968, pp. 778-804; also College Counsel, Vol. 3, No. 2, 1968, pp. 95-152 and in Journal of the College and University Personnel Association, November 1969.

Final Report of the Assembly Advisory Council on Public Employee Relations, March 15, 1973, Speaker of the Assembly, Room 3164, State Capitol, Sacramento, Calif. 95814.

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Academic Collective Bargaining Information Service, 1818 R Street, N.W., Washington, D.C. 20009. Dennis Hull Blumer, Director. Telephone: (202) 387-3760.

American Association of University Professors, Suite 500, One Dupont Circle, N.W., Washington, D.C. 20036. Woodley Osborne, Director of Collective Bargaining and Associate Counsel. Publishes Academe, a newsletter. Telephone: (202) 466-8050.

American Federation of Teachers, 1012 14th Street, N.W., Washington, D.C. 20005. Robert Neilson, Director. Publishes The American Teacher and On Campus, a newsletter for their college and universities department. Telephone: (202) 737-6141.

College and University Personnel Association, Suite 525, One Dupont Circle, N.W., Washington, D.C. 20036. R. Frank Mensel, Executive Director. Telephone: (202) 833-9080.

Education Commission of the States, Suite 300, 1860 Lincoln Street, Denver, Colorado 80203. Richard Millard, Director of Higher Education Services. Telephone: (303) 893-5200

Industrial Relations Center, College of Business Administration, University of Hawaii, Honolulu, Hawaii 96822. John B. Ferguson, Director. Telephone: (808) 948-8132 or 948-8165.

Institute of Management and Labor Relations, Rutgers University, New Brunswick, New Jersey 08903. James P. Begin, Director. Telephone: (609) 932-7480 or 448-8517.

National Association of College and University Business Officers, Suite 510, One Dupont Circle, N.W., Washington, D.C. 20036. D. F. Finn, Executive Vice President. Telephone: (202) 296-2346.

National Association of College and University Attorneys, One Dupont Circle, N.W., Washington, D.C. 20036. Peter L. Wolff, Executive Director. Telephone: (202) 296-0207.

The National Center for Dispute Settlement of The American Arbitration Association, 1212 16th Street, N.W., Washington, D.C. 20036. Alfred E. Cowles, National Director. Telephone: (202) 628-1545.

The National Center for the Study of Collective Bargaining in Higher Education, Baruch College, City College of the City University of New York, 17 Lexington Avenue, New York, New York 10010. Maurice C. Benewitz, Director. Telephone: (212) 725-3131.

National Education Association, 1201 Sixteenth Street, N.W., Washington, D.C. 20036. Charles Bob Simpson, Manager of Higher Education. Publishes Higher Education Forum. Telephone: (202) 833-4436.

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IRC Reports, Industrial Relations Center, University of Hawaii, Honolulu, Hawaii 96822.

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Liberal Education, Journal of the Association of American Colleges, 1818 R Street, N.W., Washington, D.C. 20036.

Negotiations Research Digest, National Education Association, Washington, D.C. Ten issues per year. 1967 on.

Teachers Voice, American Federation of Teachers, Washington, D.C.

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Industrial Labor Relations Review

Industrial Relations

Industrial Relations Law Digest

Labor Law Journal

Personnel Administration and Public Personnel Review

A very solid source of information is the Public Employee Relations Library in Chicago which, since 1968, has published a series of ten monographs each year dealing with public employee negotiations topics.

The above sources, while familiar to professionals in the public employment negotiations field, are not as familiar to those dealing with postsecondary education. On the other hand many of the postsecondary sources above are not well known to public employment practitioners.

H. Contracts.

There are a number of sources of contract analysis for those interested in that aspect of postsecondary collective negotiations research. The National Center for the Study of Collective Bargaining in Higher

Education at the Baruch College of the City University of New York has a computer retrieval system which locates contract items on a fee basis. Two other sources are the Higher Education Contract Clause Finder, published by the Industrial Relations Center of the University of Hawaii in 1973, with planned update on a yearly basis; and Harold I. Goodwin and John O. Andes' Collective Bargaining in Higher Education: Contract Content, 1972. Department of Educational Administration, West Virginia University, Morgantown. A number of doctoral students in higher education are currently doing studies in contract analysis and one can expect an output of materials and resources on this topic throughout 1974 and 1975. Illustrative of this is Stephen Moses, Collective Bargaining Agreements in Higher Education, Department of Higher and Adult Education, Columbia, Mo., 1973.

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Education Commission of the States

The Education Commission of the States is a nonprofit organization formed by interstate compact in 1966. Forty-seven states and territories are now members. Its goal is to further a working relationship among state governors, legislators and educators for the improvement of education. The Commission offices are located at 300 Lincoln Tower, 1860 Lincoln Street, Denver, Colorado 80203